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SHORT TITLE Henderson, Robert D. DOCKETED: Apr 29 1985
VERSUS Florida

Date	Proceedings and Orders
Apr 29 1985	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed.
Jun 3 1985	Brief of respondent Florida in opposition filed.
Jun 5 1985	DISTRIBUTED. June 20, 1985
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Jul 1 1985	The petition for a writ of certiorari is denied. Dissenting opinion by Justice Marshall, with whom Justice Brennan joins. (Detached opinion.)

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IN THE

SUPREME COURT OF THE UNITED STATES

(1)

Case No. 84 6681

ROBERT DALE HENDERSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

JAMES B. GIBSON
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SEVENTH JUDICIAL
CIRCUIT OF FLORIDA

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35 pp

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Case No.

ROBERT DALE HENDERSON,

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STATE OF FLORIDA,

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QUESTIONS PRESENTED

I. WHETHER THE FLORIDA SUPREME COURT'S AFFIRMANCE OF PETITIONER'S CONVICTIONS AND DEATH SENTENCES LEFT UNREDRESSED THE TRIAL COURT'S DENIAL OF PETITIONER'S RIGHT TO DUE PROCESS OF LAW GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, WHEN THE TRIAL COURT ADMITTED PETITIONER'S CONFESSION INTO EVIDENCE, WHERE THE STATEMENT WAS OBTAINED FOLLOWING HIS REQUEST FOR COUNSEL, CONTRARY TO THE DICTATES OF EDWARDS V. ARIZONA, 451 U.S. 447 (1981)?

II. WHETHER THE FLORIDA SUPREME COURT'S AFFIRMANCE OF PETITIONER'S CONVICTIONS AND DEATH SENTENCES LEFT UNREDRESSED THE TRIAL COURT'S DENIAL OF PETITIONER'S RIGHT TO DUE PROCESS OF LAW GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, WHEN THE TRIAL COURT DENIED PETITIONER'S MOTION TO QUASH THE JURY VENIRE FROM THE SERVICE ON WHICH A SIGNIFICANT PORTION OF THE QUALIFIED POPULATION WAS ARBITRARILY PERMITTED TO "OPT OUT," CONTRARY TO THE DICTATES OF TAYLOR V. LOUISIANA, 419 U.S. 522 (1975), PETERS V. KIFF, 407 U.S. 4930 (1972), AND DUREN V. MISSOURI, 439 U.S. 357 (1979)?

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OPINION BELOW

The opinion and judgment of the Supreme Court of Florida sought to be reviewed via this Petition is reported as Henderson v. State, 463 So. 2d 196 (Fla. 1985). It is reproduced in the appendix hereto as item one. (A 1-6)

JURISDICTION OF THE SUPREME COURT

The Supreme Court of Florida issued the opinion in this case on January 10, 1985. (A 1-6) Rehearing was denied on February 28, 1985. (A 1-6) The mandate was issued by the Florida Supreme Court on April 9, 1985. (A 7) Petitioner asserted below and asserts here a deprivation of his rights as guaranteed under the United States Constitution. Title 28 United States Code, Section 1257(3) and Rule 17 of the United States Supreme Court Rules confer certiorari jurisdiction in this Court to review the judgment in this case.

CONSTITUTIONAL PROVISIONS INVOLVED

1. Amendment V to the Constitution of the United States:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life, or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. Amendment VI to the Constitution of the United States:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed,

> which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

3. Amendment XIV, Section 1 to the Constitution of the United States, in part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within this jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner was indicted by the Hernando County, Florida, Grand Jury for three counts of murder in the first degree. He was tried by a jury in Lake County, Florida, on November 16 through 20, 1982, was convicted as charged, and on November 22, 1982, he was sentenced to death. (A 1-6)

Prior to trial, Petitioner's motion to suppress statements and motion to quash the jury venire were denied. (A 8-12, 15-19) The Florida Supreme Court affirmed the convictions and death sentences. (A 1-6)

STATEMENT OF THE FACTS

Vernon Odum, Robert Dawson, and Frances Dickey each died within minutes of being shot once in the head and losing consciousness upon the bullet's impact. Their deaths might not have been discovered except that on February 6, 1982, Petitioner called the Sheriff's Office of Charlotte County, Florida, and

said that he wanted to give himself up. He told Charlotte County deputies that he had killed three hitchhikers in north Florida.

On February 10, 1982, Deputies Bakker and Hord of the Putnam County, Florida, Sheriff's Office took custody of Petitioner upon a warrant for murder in Putnam County. They were given a document signed by Petitioner declaring his desire to not discuss any criminal matters with anyone without the presence of his attorney. (A 13) During the four-and-a-half to five-hour drive to Putnam County, the deputies and Petitioner engaged in general conversation, and Deputy Hord "could tell" that Petitioner had "something on his mind." When Deputy Bakker went into the Crescent City Police Department to call the chief of detectives, Deputy Hord asked Petitioner "what he was trying to tell me." Petitioner said that there were three bodies, and he wanted them located. He was concerned that they be given a proper burial.

Petitioner signed a waiver of rights form, standard except for the addition of a paragraph indicating that he wished to exercise his right to go against his attorney's advice and talk to the deputies. The addition had been made before the deputies left the Putnam County Sheriff's Office, just in case Petitioner wanted to go against what his attorney had said and talk. (A 14)

Petitioner directed the Putnam County deputies to an undeveloped subdivision in Hernando County, where the bodies were found. In his statements, Petitioner said that he had picked up Dickey, Dawson, and Odum hitchhiking not far from Tallahassee, Florida. When one of the men wanted to stop to test fire a sawed-off shotgun that he said was stolen, and to have sex with the woman, Petitioner pulled off Highway 44 into the subdivision. During the stop, Petitioner heard the hitchhikers plotting to get some money either by murder or by kidnapping. He had the woman tape the men's wrists and ankles together with adhesive tape, and then he taped her hands and feet. He would have just left

them there, but they were "running their mouths," so he shot the two men. The woman broke her tape, and began screaming at Petitioner. He taped her back up and, again, would have left her there alive except that she said if he was going to kill her go ahead and kill her, and he shot her in the head.

Petitioner surrendered himself to authorities, was co-operative with law enforcement officers with whom he dealt and, in every matter which could be verified, accurate.

REASONS FOR GRANTING THE WRIT

I. THE FLORIDA SUPREME COURT'S AFFIRMANCE OF PETITIONER'S CONVICTIONS AND DEATH SENTENCES LEFT UNREDRESSED THE TRIAL COURT'S DENIAL OF PETITIONER'S RIGHTS TO ASSISTANCE OF COUNSEL AND DUE PROCESS OF LAW GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, WHEN THE TRIAL COURT ADMITTED PETITIONER'S CONFESSION, WHERE THE STATEMENT WAS OBTAINED FOLLOWING HIS REQUEST FOR COUNSEL CONTRARY TO THE DICTATES OF EDWARDS V. ARIZONA, 451 U.S. 447 (1981).

In Miranda v. Arizona, 384 U.S. 436 (1966), this Court held that where a defendant is undergoing custodial interrogation and he indicates his desire to exercise his right to consult with an attorney, interrogation must cease. The Court prohibited any further elicitation of information without the benefit of counsel:

> If the individual states that he wants an attorney, the interrogation must cease until an attorney is present . . . If the individual cannot obtain an attorney and he indicates that he wants one before speaking to police, they must respect his decision to remain silent. Miranda v. Arizona, 384 U.S. at 474.

An accused in custody, "having expressed his desire to deal with the police only through counsel, is not subject to further

interrogation by the authorities until counsel has been made available to him," unless he validly waives his earlier request for the assistance of counsel. Edwards v. Arizona, 451 U.S. 477, at 484-485 (1981). This rule requires, first, that courts determine whether the accused actually invoked his right to counsel and, second, whether the accused initiated further discussions with the police and knowingly and intelligently waived the right he had invoked. Edwards v. Arizona, 451 U.S. at 485, 486; Smith v. Illinois, 469 U.S. ___, 83 L.Ed.2d 488, at 494 (1984).

Petitioner's invocation of his right to counsel at any questioning was written, unequivocal, and emphatic. (A 13) Although the written invocation specifically stated that Petitioner desired to have his attorney present during "any . . . conversation whatsoever," and the deputies claimed that they followed his declaration "to the letter," they nevertheless engaged in conversation with Petitioner during their four-and-a-half to five-hour drive to Putnam County. Deputy Bakker "felt" that Petitioner wanted to discuss "the matter" with them because he kept making "subtle statements," like "how dangerous" it was to pick up hitchhikers. Deputy Hord's feeling that Petitioner wanted to talk was based on his perceptions of Petitioner's facial expressions and physical gestures. Although Petitioner had not said anything, when the deputies stopped at the Crescent City Police Department for Deputy Bakker to use the telephone, Deputy Hord interpreted Petitioner's facial expressions to say, "Here I am. I know all these things, and all you're going to do is take me to jail." Upon being asked what Petitioner had done to specifically communicate a desire to talk, Deputy Hord said, "It's hard to describe an expression."

When Deputy Bakker left the car to make the telephone call, Deputy Hord said he turned to Petitioner and asked him, "What

are you trying to tell me?" Petitioner indicated that he wanted to help the deputy "find some bodies." Deputy Hord immediately contacted Deputy Bakker because, although the deputies said they had no intention of violationg Petitioner's invocation, they had earlier determined that in the event that Petitioner wanted to make a statement, or "information came to light," Sergeant Bakker was the officer that would deal with that. Further, although the deputies protested that they complied with Petitioner's declaration "to the letter," they also happened to carry with them, at their detective chief's instructions, a specially prepared waiver of rights form which included an extra paragraph indicating Petitioner's understanding of his "Constitutional Rights to disregard the instructions of my attorney and to speak with the Officers from Putnam County, Florida." The alteration in the standard waiver form had been made before the deputies had left the Sheriff's Office "just in case" Petitioner wanted to go against his attorney's advice.

The deputies' waiver of rights form, moreover, contained the following statement:

> "We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court." (A 14)

In Smith v. Illinois, supra, this Court reiterated that Edwards v. Arizona set forth a "bright-line rule" that all questioning must cease after an accused requests counsel because, in the absence of such a bright-line prohibition, the authorities through "badger[ing]" or "overreaching"--explicit or subtle, deliberate or unintentional--might otherwise wear down the accused and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance. Oregon v. Bradshaw, 462 U.S. ___, 77 L.Ed.2d 405 (1983). After a request for an attorney, a subsequent waiver will not be deemed valid simply from the fact that a confession was given or a waiver signed. United States v. Massey, 550 F.2d 300, 307-308 (5th Circ. 1977).

The record must show that an accused was specifically offered counsel but intelligently and understandingly rejected that offer. Anything less is not a waiver. United States v. Massey, supra, at 308. Here, quite to the contrary, Petitioner was specifically told that counsel was not available, and the taking of his statement proceeded. In affirming Petitioner's convictions, the Florida Supreme Court found that the execution of a written waiver in this case was a sufficient showing that Petitioner waived his right to counsel during interrogation. (A 1-6) This finding, however, does not take into account that Petitioner's rights were violated when Deputy Hord questioned him by asking, "What are you trying to tell me?" and when the deputies extracted a written specially-prepared waiver which told him that he could not have a lawyer present. Whether it was "explicit or subtle, deliberate or unintentional," the Putnam County deputies' resumed questioning of Petitioner, after his utterly unequivocal invocation of his right to counsel, constituted impermissble overreaching. The motion to suppress his statements given thereafter (A 8-12) should have been granted.

II. THE FLORIDA SUPREME COURT'S AFFIRMANCE OF PETITIONER'S CONVICTIONS AND DEATH SENTENCES LEFT UNREDRESSED THE TRIAL COURT'S DENIAL OF PETITIONER'S RIGHT TO DUE PROCESS OF LAW GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, WHEN THE TRIAL COURT DENIED PETITIONER'S MOTION TO QUASH THE JURY VENIRE FROM THE SERVICE ON WHICH A SIGNIFICANT PORTION OF THE QUALIFIED POPULATION WAS ARBITRARILY PERMITTED TO "OPT OUT," CONTRARY TO THE DICTATES OF TAYLOR V. LOUISIANA, 419 U.S. 522 (1975), PETERS V. KIFF, 407 U.S. 4930 (1972), AND DUREN V. MISSOURI, 439 U.S. 357 (1979).

It is part of the established tradition in the use of

juries as instruments of public justice that the jury be a body truly representative of the community. Smith v. Texas, 311 U.S. 128 (1940). The operation of Section 40.013 of the Florida Statutes (1981), and the particular manner in which it was implemented violated Petitioner's right to an impartial jury trial.

Section 40.013(8), excusing persons 70 years of age or older, unconstitutionally discriminates on the basis of age, and allows an extremely significant portion of the qualified population to "opt out" of jury service and violates the accused's right to an impartial jury. Machetti v. Linahan, 679 F.2d 236 (11th Circ. 1982). That persons over the age of 70 represent a large percentage of Florida's population is demonstrated not only by common knowledge but by the fact that of the 68 unverified excusals unauthorizedly granted by the Clerk of Lake County, 26 were persons over 70. Although Petitioner is not a member of this class of persons, he has the right to select his jury from among them. Peters v. Kiff, 407 U.S. 4930 (1972); Duren v. Missouri, 439 U.S. 357 (1979).

Petitioner attacked the jury venire drawn for his trial in Lake County for this reason, and because of the method by which summoned jurors were excused--by the Clerk, not the judge. Taylor v. Louisiana, 419 U.S. 522 (1975), held that the States are free to grant exemptions from jury service to individuals engaged in particular occupations the uninterrupted performance of which is critical to the community's welfare. Florida has granted a statutory excuse to practicing attorneys and physicians, but only by the presiding judge in his or her discretion. §40.013(5), Fla. Stat. (1981). The Lake County Clerk excused a doctor, and dentist, without contacting a judge.

Although "hardship" is a constitutionally permissble basis for excusing a potential juror from service, Petitioner contends

that the lack of definition renders Section 40.013(6)'s "hardship, extreme inconvenience, or public necessity" vague, and that the administrative judge's delegating to the Clerk the power to define these terms was unauthorized. Taylor v. Louisiana, supra.

Petitioner's Motion to Quash Jury Venire attacked the statutory provisions for excusing jurors and the method by which they were carried out in Lake County. (A 15-19) The Florida Supreme Court's affirmance of his convictions on the basis that a cited case, Alachua County Court Executive v. Anthony, 418 So. 2d 264 (Fla. 1982), did not involve the Sixth Amendment, does not answer Petitioner's challenges. Because the statute itself and the Clerk's unauthorized improper exercise of the trial judge's excusal power violated Petitioner's right to a fair and impartial jury drawn from the community as a whole, the motion should not have been denied.

CONCLUSION

The Florida Supreme Court's refusal to apply the dictates of Edwards v. Arizona, 451 U.S. 477 (1981), resulted in a deprivation of Petitioner's constitutional right to assistance of counsel and due process of law guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution. The Florida Supreme Court's refusal to apply to dictates of Taylor v. Louisiana, 419 U.S. 522 (1975), Peters v. Kiff, 407 U.S. 4930 (1972), and Duren v. Missouri, 439 U.S. 357 (1979), resulted in a deprivation of Petitioner's constitutional right to a trial by an impartial jury and due process of law guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. Upon the foregoing reasons, Petitioner prays

that this Honorable Court grant a Writ of Certiorari.

Respectfully submitted,

JAMES B. GIBSON, PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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APPENDIX

EDITOR'S NOTE

PAGES A-1 —— A-20 WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

defendant would be willing to testify to prove the victims of the cost of their incarceration. This briefly gives an indication of [illegible] the character of the Defendant, Theodore Roosevelt Randolph [illegible]

In *Gibson v. State*, 351 So.2d 948 (Fla. 1977), Delores Walker and another young woman picked up two Brazilian seamen and invited them to their home to spend the night. This was at the suggestion of the defendant and another individual who planned to "roll" the seamen. Shortly after midnight the Brazilian seamen got into a car with the defendant and the two women. After they traveled a short distance Walker drove down a dark street and stopped the car. Gibson directed the two men to get out of the car and hand over their money. As one seaman got out of the car offering his money, Gibson shot him twice in the head. Gibson was twenty-eight years of age at the time of the crime. The trial court found that the murder was committed during the commission of an armed robbery, was committed for pecuniary gain, and was especially heinous, atrocious and cruel. This Court held that the trial judge improperly combined the armed robbery with the motive of pecuniary gain. Nevertheless the death sentence was upheld.

In *Foster v. State*, 369 So.2d 928 (Fla. 1979), two young girls met defendant and the victim at a bar. They knew defendant but the victim was a stranger. The defendant and the girls had planned for one of them to have sex with the victim and make some money. The vehicle was parked in a deserted area and after some conversation concerning compensation the victim and one of the girls began to disrobe. Defendant suddenly began hitting the victim and accusing him of taking advantage of his sister. Defendant then held a knife to the victim's throat and cut his neck, causing it to bleed profusely. The victim was still breathing so defendant took a knife and cut the victim's spine. The girls and defendant then drove off in the victim's Winnebago and found the victim's wallet underneath a mattress. They split the money. The jury recommended a death sentence and the trial judge found that the murder was committed while defendant was engaged in the commission of a robbery and that the capital felony was especially heinous and atrocious. In our opinion we said:

> Before imposing the death sentence, the trial judge considered three psychiatric reports (with which defendant's attorney was familiar) and found that there were no mitigating circumstances sufficient to overcome the heinous nature of the homicide. The defendant committed the homicide in an effort to fulfill his intentions and complete his desire, i.e., "stopping the victim off." An elderly gentleman had agreed to go out and have some fun, but the price of such activity was his life. Defendant showed no compassion when he cut the victim's throat, beat him, dragged him into the woods, and cut his spine with a knife.

Foster v. State, 369 So.2d 928, 931.

I would deny the petition for rehearing because it violates our Rules of Appellate Procedure. However, if we reconsider the sentence, other similar cases in which the death sentence was upheld would lead us to an affirmance of the reasoned judgment of judge and jury in the case before us.

BOYD, C.J., and ALDERMAN, J., concur.

Robert Dale HENDERSON, Appellant,

v.

STATE of Florida, Appellee.

No. 63084.

Supreme Court of Florida.

Jan. 10, 1985.

Rehearing Denied Feb. 25, 1985.

Defendant was convicted in the Circuit Court in and for Hernando County, L.R.

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Rutledge, Jr., J., of three counts of first-degree murder, and he appealed. The Supreme Court, Boyd, C.J., held that: (1) there was sufficient evidence to support finding that defendant knowingly and intelligently waived his right to have counsel present when making his statements; (2) testimony concerning defendant's admission to being wanted in other states bore no relevance to any material fact at issue, but error in denying motion to exclude reference to crimes committed in other jurisdictions was harmless; (3) photographs of victims' partially decomposed bodies were relevant; (4) there was no error in denial of motion for mistrial; (5) provisions of statute pertaining to permissible excusals from jury service did not violate Sixth Amendment; (6) evidence that victims were bound and gagged and shot one by one execution-style supported finding that murders were especially heinous, atrocious or cruel and were committed in cold, calculated and premeditated manner without pretense of moral or legal justification; and (7) Florida's death penalty law is constitutional.

Affirmed.

1. Criminal Law ⇐412.2(4)

When accused asks to see counsel, interrogation must cease; however, there is nothing to prevent accused from changing his mind and volunteering further information.

2. Criminal Law ⇐412.2(5)

Stricter standard for showing that accused has knowingly and intelligently waived previous request for counsel is met when accused voluntarily executes written waiver.

3. Criminal Law ⇐414

There was sufficient evidence, including written waivers signed before making statements in question, to support finding that defendant knowingly and intelligently waived his right to have counsel present when making those statements.

4. Criminal Law ⇐338.1, 1159.11

Testimony concerning defendant's admission to being wanted in other states bore no relevance to any material fact at issue, but error in denying motion to exclude reference to crimes committed in other jurisdictions was harmless, where amount of evidence against defendant was overwhelming.

5. Criminal Law ⇐438(6)

Photographs of victims' partially decomposed bodies were relevant to show location of victims' bodies, amount of time that passed between murders and time when bodies were found, and manner in which they were clothed, bound and gagged.

6. Criminal Law ⇐338(1)

Persons accused of crimes can generally expect that any relevant evidence against them will be presented in court; test of admissibility is relevancy.

7. Criminal Law ⇐1144.13

It is not to be presumed that gruesome photographs will so inflame jury that they will find accused guilty in absence of evidence of guilt; rather, all jurors are presumed to be guided by logic and thus are aware that pictures of murder victims do not alone prove guilt of accused.

8. Criminal Law ⇐687

There was no error in denial of mistrial when trial judge, in advising jury of probable duration of trial, suggested that there would be second phase of trial concerned with sentencing and, upon objection by defense, gave curative instruction indicating that he only meant to estimate maximum period of time to be set aside for trial and had not made any judgment about what the evidence was likely to show.

9. Jury ⇐33(1.1)

Provisions of statute pertaining to permissible excusals from jury service did not violate Sixth Amendment, despite contention that statute operated to deny defendant right to be tried by jury drawn from venire representing "cross-section" of com-

munity. West's F.S.A. § 48.812; U.S.C.A. Const.Amend. 6.

10. Homicide ⇐354

Evidence that victims were bound and gagged and shot one by one execution-style supported finding of aggravating circumstances that murders were especially heinous, atrocious or cruel and were committed in cold, calculated and premeditated manner without pretense of moral or legal justification.

11. Criminal Law ⇐1208.1(2)

Florida's death penalty law is constitutional.

12. Homicide ⇐354

Trial court properly found that there were no mitigating circumstances sufficient to outweigh aggravating circumstances supporting death sentence for three counts of first-degree murder.

13. Homicide ⇐354

Three sentences of death for three counts of first-degree murder were appropriate under law established in similar cases.

James B. Gibson, Public Defender, and Bryan Newton, Asst. Public Defender, Daytona Beach, for appellant.

Jim Smith, Atty. Gen., and Mark C. Menser, Asst. Atty. Gen., Daytona Beach, for appellee.

BOYD, Chief Justice.

This cause is before the Court on appeal of judgments of conviction on three counts of first-degree murder. Appellant Robert Dale Henderson was sentenced to death for each of the three capital offenses. Therefore, this Court has jurisdiction of the appeal. Art. V, § 3(b)(1), Fla. Const. Upon reviewing the record and considering appellant's arguments on appeal, we find no reversible error and affirm the convictions and sentences of death.

Appellant's murder convictions are based upon the deaths of three hitchhikers in Hernando County, Florida. Henderson turned himself in to the sheriff's office in Charlotte County, Florida, on February 6, 1982. He confessed to murdering three hitchhikers in northern Florida and to several other unrelated murders. He then requested counsel and signed a "Notice of Defendant's Invocation of the Right to Counsel."

On February 10, 1982, two Putnam County sheriff's deputies took custody of Henderson for an unrelated murder and were transporting him to Putnam County by automobile when Henderson volunteered to show them where the bodies of the three hitchhikers were. They advised him of his rights, after which he signed a waiver of rights form and led them to the field where the bodies were discovered.

The following June, a Hernando County detective took custody of Henderson in Putnam County for the purpose of transporting him to Hernando County to be tried for the murders of the three hitchhikers. At first Henderson said he did not want to talk because he had already given his statement to the other deputies. Later during the ride Henderson changed his mind and, after executing a written waiver, talked about the details of the murders.

Henderson filed two pretrial motions to suppress the statements he made to the Putnam County deputies and to the Hernando County detective. The motions alleged that the statements were elicited from him after he had invoked his right to remain silent by requesting an attorney. After holding an evidentiary hearing, the trial court denied the motions.

At trial a deputy sheriff of Charlotte County testified that he was responding to a call reporting an automobile burglary when Henderson motioned to him. When the officer approached, Henderson said he wanted to give himself up for murder and that he was wanted in several states. The officer testified that Henderson surrendered a bag containing a .22 caliber revolver which Henderson said was the murder weapon. After the officer arrested Henderson and advised him of his constitution-

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al rights, Henderson said that he had killed three hitchhikers in north Florida.

Another Charlotte County deputy sheriff testified that he interviewed Henderson after advising him of his constitutional rights. According to this witness, Henderson said that he shot all three hitchhikers in the head and dumped their bodies in a remote area south of Perry, Florida.

One of the Putnam County sheriff's deputies testified about Henderson's showing him the location of the bodies. The Hernando County detective testified that when he was transferring Henderson from Putnam to Hernando County, Henderson agreed to talk and gave details of the murders. A transcript of Henderson's confession was read to the jury. According to the transcript, Henderson said he picked up the hitchhikers, two male and one female, near Panama City and became concerned when he heard two of them talking about killing someone to get some money. Henderson was quoted as saying that he bound and gagged the three hitchhikers and shot them each in the head with a .22 caliber revolver.

There was substantial medical and scientific testimony corroborating Henderson's confessions. The medical examiner testified that the victims, two male and one female, had each died of a gunshot wound to the head. A firearms expert testified that the bullet fragments found in the victims had the same rifling characteristics as did bullets shot from the .22 caliber revolver found in Henderson's possession when he was arrested. Crime scene investigators testified that the victims' bodies were found bound and gagged with tape in the manner described in Henderson's statements.

The defense rested without presenting any evidence. The jury found Henderson guilty of three counts of first-degree murder.

At the penalty phase of the trial, the state presented evidence of Henderson's prior convictions for two counts of first-degree murder. The state also called the Hernando County detective who testified that Henderson told him he had no regrets and that if he had his life to live over again, he would not change anything. The defense presented evidence that Henderson was abused as a child and that he showed the police the location of the victims' bodies so they could be buried.

The jury recommended that Henderson be sentenced to death. The trial judge adopted the jury's recommendation and found as aggravating circumstances that Henderson had previously been convicted of a violent felony; that the murders were especially heinous, atrocious, or cruel; and that they were committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. The judge found there was no evidence of any statutory mitigating circumstances and that the nonstatutory mitigating circumstances presented were of little if any weight.

[1–3] Henderson's first point on appeal claims error in the denial of his pretrial motions to suppress the statements he made to the Putnam County deputy and the Hernando County detective. Henderson claims that these statements were improperly elicited from him after he had requested the assistance of counsel. It is true that when an accused asks to see counsel, interrogation must cease. *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981). However, there is nothing to prevent an accused from changing his mind and volunteering further information. "The stricter standard for showing that an accused has knowingly and intelligently waived a previous request for counsel is met when the accused voluntarily executes a written waiver." *Connody v. State*, 427 So.2d 723, 729 (Fla.1983). In this case Henderson signed written waivers before making the statements in question. We therefore conclude that there is sufficient evidence to support the finding that he knowingly and intelligently waived his right to have counsel present when making these statements.

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Next Henderson argues that the trial judge erred in denying in part his motion in limine to exclude references to unrelated crimes committed in other jurisdictions. In response to Henderson's motion, the state averred that the only evidence of collateral crimes it anticipated introducing was the statement Henderson made to the arresting officer that he was turning himself in for murder and that he was wanted in several states. The trial court ruled that this statement was admissible.

[4] We agree with Henderson's contention that the testimony concerning his admission to being wanted in other states bore no relevance to any material fact at issue in this case. Hence his motion to exclude all references to crimes committed in other jurisdictions should have been granted. However, we find that the error was harmless and could not possibly have affected the outcome of the case. The amount of evidence against Henderson is simply overwhelming. There were at least four confessions to four different police officers. There was also substantial circumstantial evidence linking him to the crime and corroborating his confessions. Given the magnitude of this evidence, we do not believe that the jury was unduly or improperly influenced by the evidence that Henderson admitted to being wanted in other states.

[5-7] Next Henderson argues that the trial court erred by allowing into evidence gruesome photographs which he claims were irrelevant and repetitive. We find that the photographs, which were of the victims' partially decomposed bodies, were relevant. Persons accused of crimes can generally expect that any relevant evidence against them will be presented in court. The test of admissibility is relevancy. *Adams v. State*, 412 So.2d 850 (Fla.), *cert. denied*, 459 U.S. 882, 103 S.Ct. 182, 74 L.Ed.2d 148 (1982); *Straight v. State*, 397 So.2d 903 (Fla.), *cert. denied*, 454 U.S. 1022, 102 S.Ct. 556, 70 L.Ed.2d 418 (1981). Those whose work products are murdered human beings should expect to be confronted by photographs of their accomplishments. The photographs were relevant to show the location of the victims' bodies, the amount of time that had passed from when the victims were murdered to when their bodies were found, and the manner in which they were clothed, bound and gagged. It is not to be presumed that gruesome photographs will so inflame the jury that they will find the accused guilty in the absence of evidence of guilt. Rather, we presume that jurors are guided by logic and thus are aware that pictures of the murdered victims do not alone prove the guilt of the accused. We therefore conclude there was no error in allowing the photographs into evidence. *Aldridge v. State*, 351 So.2d 942 (Fla.1977), *cert. denied*, 439 U.S. 882, 99 S.Ct. 220, 58 L.Ed.2d 194 (1978); *Jackson v. State*, 359 So.2d 1190 (Fla.1978), *cert. denied*, 439 U.S. 1102, 99 S.Ct. 881, 59 L.Ed.2d 63 (1979); *Swan v. State*, 322 So.2d 485 (Fla.1976).

[8] Henderson argues that the trial judge erred when, in advising the jury of the probable duration of the trial, he suggested that there would be a second phase of the trial concerned with sentencing. Because a sentencing phase would only be required upon conviction of a capital offense, appellant argues that the statement indicated to the jury that the judge thought appellant would be found guilty of at least one of the charged first-degree murder counts. Upon the raising of an objection by the defense, the judge gave a curative instruction indicating that he only meant to estimate the maximum period of time to be set aside for the trial and had not made any judgment about what the evidence was likely to show. Defense counsel moved for a mistrial and now argues that the denial of the motion was reversible error. We find the argument to be completely without merit.

[9] Henderson also argues that several of the provisions of section 40.013, Florida Statutes (1981), pertaining to permissible excusals from jury service, operated to deny him the right to be tried by a jury drawn from a venire representing a "cross-section" of the community. *See Taylor v.*

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Louisiana, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975). He relies on *Alachua County Court Executive v. Anthony*, 418 So.2d 264 (Fla.1982). That decision held that the exemption for mothers with small children was faulty on equal protection grounds for not treating similarly situated fathers the same way. The sixth amendment was not involved in that case and we do not read it as announcing any right of defendants that would support appellant's argument here. We find appellant's challenge to be without merit. *Hitchcock v. State*, 413 So.2d 741 (Fla.), *cert. denied*, 459 U.S. 960, 103 S.Ct. 274, 74 L.Ed.2d 218 (1982); *McArthur v. State*, 351 So.2d 972 (Fla.1977).

[10] With respect to his sentence, Henderson argues that the trial judge erred in finding that the murders were especially heinous, atrocious or cruel. Henderson claims that the murders were not heinous, atrocious, or cruel because the victims died instantaneously from single gunshots to their heads. This argument overlooks the fact that the victims were previously bound and gagged. They could see what was happening and obviously experienced extreme fear and panic while anticipating their fate. We therefore conclude that this aggravating circumstance applies. *White v. State*, 403 So.2d 331 (Fla.1981), *cert. denied*, — U.S. —, 103 S.Ct. 3571, 77 L.Ed.2d 1412 (1983); *Knight v. State*, 338 So.2d 201 (Fla.1976).

Appellant also argues that the court erred in finding that the murders were committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. We hold that there was sufficient evidence to support the trial judge's finding of this factor. Henderson rendered the victims helpless by binding their ankles with tape. He then coldly proceeded to shoot them one by one execution-style.

[11] Finally Henderson argues that Florida's death penalty law is unconstitutional. However, all his arguments have previously been refuted by this Court on a number of occasions and therefore do not merit any further discussion.

[12] In conclusion, the properly established aggravating circumstances are:

1. Appellant had previously been convicted of two counts of first-degree murder.

2. The murders were all heinous, atrocious, and cruel.

3. The murders were all committed in a cold, calculated, and premeditated manner without pretense of moral or legal justification.

The trial court properly found that there were no mitigating circumstances sufficient to outweigh the aggravating circumstances found.

[13] We therefore affirm the convictions on three counts of first-degree murder. Finding that the three sentences of death are appropriate under the law established in similar cases, we affirm them also.

It is so ordered.

ADKINS, OVERTON, ALDERMAN, McDONALD, EHRLICH and SHAW, JJ., concur.

Raymond KOON, Appellant,

v.

STATE of Florida, Appellee.

No. 63322.

Supreme Court of Florida.

Jan. 10, 1985.

Rehearing Denied March 4, 1985.

Defendant was convicted in the Circuit Court, Collier County, Charles T. Carlton, J., of first-degree murder, and direct appeal

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Mandate
Supreme Court of Florida

To the Honorable, the Judges of the Circuit Court in and for Hernando County, Flori

WHEREAS, in that certain cause filed in this Court styled:

ROBERT DALE HENDERSON vs. STATE OF FLORIDA

RECEIVED
APR 18 1985
PUBLIC DEFENDER'S OFFICE
7th CIR. APP. DIV.

Case No. 63,094

Your Case No. 82-202-CF

The attached opinion was rendered on January 10, 1985.

YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion, the rule of this Court and the laws of the State of Florida.

WITNESS the Honorable Joseph A. Boyd, Jr.

Chief Justice of the Supreme Court of Florida and the Seal of said Court at Tallahassee, the Capital, on this 9th day of April, 1985.

Clerk of the Supreme Court of Florida.

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IN THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT IN AND
FOR HERNANDO COUNTY, FLORIDA.

CASE NO: 82-202-CF

STATE OF FLORIDA,

vs.

ROBERT DALE HENDERSON,

Defendant.

_____/

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FIRST MOTION TO SUPPRESS

DEFENDANT, ROBERT DALE HENDERSON, by and through the undersigned attorney, pursuant to Rule 3.190 (i), The Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article 1, Sections 9, 12 and 16, of the State of Florida Constitution, moves the Court to enter an Order suppressing any and all statements that Defendant made to any and all law enforcement officers regarding the alleged triple homocide which is the subject of the instant cause and in support of such motion, Defendant would show:

1. On February 7, 1982, Defendant executed a Notice of Defendant's Invocation of the Right to Counsel. A copy being attached hereto and made a part hereof as Exhibit "A".

2. Pursuant to the above described declaration, Defendant among other things, indicated the following:

(a) Defendant desired to have his attorney present before and during any questioning, interrogation, interviewing or other conversations whatsoever between himself and any police agency.

(b) Defendant specifically indicated that at no time in the future would he waive any rights he had to counsel unless and until he had adequate consultation with an attorney.

3. On or about February 10, 1982, Detective Sgt. Richard W. Bakker and Detective W.C. Hord of the Putnam County Sheriff's Department arrested the Defendant in Charlotte County pursuant to an arrest warrant issued by the Honorable William E. Warren, County Judge in and for Putnam County.

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4. At the time the Defendant was taken into custody by the above-referenced officers, the said officers were served with a copy of the aforedescribed Notice of Defendant's Invocation of the Right to Counsel.

5. Defendant was then transported in the exclusive care, custody and control of the two officers from the Putnam County Sheriff's Department back to Putnam County. The trip took between three and five hours.

6. While enroute back to Putnam County, both officers freely conversed with the Defendant which was in direct violation of the declarations contained within the Defendant's Invocation of his Right to Counsel. Further, the conversations included discussions regarding Christian burial.

7. Upon arriving in Putnam County, the officers elected to stop in Crescent City for purposes of calling into headquarters.

8. During the stop, Detective Hord at some point inquired of the Defendant, "just what is it you're trying to say?"

9. Pursuant to this inquiry, Defendant then made certain incriminating statements.

10. Subsequent to the initial incriminating statements, Officer Bakker caused to have prepared a Waiver of Rights which was executed by the Defendant on the 10th day of February, 1982, a copy of the same being attached hereto and made a part hereof as Exhibit "B".

11. Upon obtaining said Waiver, Officers Bakker and Hord began interrogation of the Defendant which ultimately resulted in Defendant making a full and complete statement regarding his alleged involvement in the three homocides subject of the instant cause. Further, Defendant ultimately led law enforcement officers that same day to the actual site of the alleged homocide and the bodies located therein.

12. Defendant avers that the conduct of both officers violated the intent, meaning, spirit, and purpose of the Notice of Defendant's Invocation of Right to Counsel. Additionally, Defendant maintains that Officer Hord's question, "Just what is it you're trying to tell me?" amounts to a direct inquiry initiated by law enforcement into the Defendant's alleged criminal activity.

13. Defendant maintains that such conduct by law enforcement amounts to a violation of the earlier cited constitutional provisions as defined and applied by recent case law. In support of this position, the Defendant would cite the following cases: Massiah v. United States, 337 U.S., 201 (1964), Supreme Court; Brewer v. Williams, 431 U.S. 925 97 Supreme Court, 2200 (1977); Rhode Island v. Innis. 100 Supreme Court, 1682 (1980); Edwards v. Arizona, 101 Supreme Court, 1880,(198 and Cahill v. Rushen, 501 Federal Supplement 1219 (1982).

In the aforementioned cases, it was uniformly held that once a prisoner declares that he wishes to exercise his right to counsel and right to remain silent as set forth in United States Constitution, the State has a heavy burden to establish that any subsequent waiver is made freely and voluntarily without coercion or duress. In the Brewer decision, a similar set of circumstances existed relative to the instant cause. In that case, the defendant was suspected of having committed the murder of a ten year old girl. Prior to his admissions, he had clearly declared his intention to exercise his right to counsel and had refused to make any statements to the authorities, however, during an automobile trip, wherein he was in the exclusive care, custody and control of certain law enforcement officers, conversations resulted which ultimately let to the defendant making admissic against his interests. The court in suppressing the confessions, indicated that the conversations between law enforcement and the defendant regarding the christian burial of the decedent was tantamount to interrogation and, therefore, respondent was entitled to assistance of counsel prior to making any statement to law enforcement officials. In Rhode Island v. Innis, a similar set of circumstances arose wherein the court struck down certain incriminating statements made by the defendant in response to certain questions which although did not amount to interrogation, were interpreted by the court to be conduct intended to illicit information from the defendant. The same rational was following in the Cahill decision wherein the defendant, after having exercised his right to consult with a lawyer prior to trial, made certain confessions after trial that ultimately the government attempted to use at a ond trial. Further authority for defendant's

position can be found in the case of Edwards v. Arizona, 101 Supreme Court, 1880, (1981). In the Edwards decision, interrogation occurred subsequent to defendant's exercise of his rights to counsel. In declaring that the Defendant's constitutional rights were violated by the law enforcement authorities during their interrogation, the court held that where the defendant had invoked his right to have counsel present during custodial interrogation, as in the instant case, a valid waiver of that rights could not be established by showing only that he responded to police initiated interrogation after being again advised of his rights. Defendant further maintains that the State of Florida has embraced the above-referenced principles as the law of the State of FLorida pursuant to the decision handed down in the case of Jones v. State, 346 So.2d 639 (2d DCA, 1977). In the Jones decision, a police officer continued to engage in conversation with the defendant subsequent to defendant's exercise with the defendant. However, in rejecting the State's position, the court held that the officer's conduct clearly was intended to exact certain incriminating information from the defendant and, therefore, in fact, amounted to interrogation in violation of the defendant's earlier exercised right to counsel.

WHEREFORE Defendant prays the Court will enter an Order delcaring any admissions defendant may have made to law enforcement officers pursuant to the interrogation conducted by the Putnam County authorities inadmissible inasmuch as they were illicited from the defendant in violation of his constitutional righ and further declaring that the State shall not use as evidence against the Defendant any further statements or real evidence, specifically including, but not limited to, the three bodies which defendant led the authorities to during the course of the subject interrogation, inasmuch as the same amounts to fruit of the poison tree as set forth in the mose recent decision from the United States Supreme Court in the case of Taylor v. Alabama, Supreme Court, decided June 23,(1982), and as set forth in numerous Florida decisions.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to the OFFICE OF THE STATE ATTORNEY, Hernando County Courthouse, Brooksville, Florida this 18th day of August, 1982.

HOWARD BABB, JR.
Public Defender
Office of the Public Defender

BY: John W. Springstead
JOHN W. SPRINGSTEAD
Assistant Public Defender

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EXHIBIT "A"

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR CHARLOTTE COUNTY, FLORIDA

STATE OF FLORIDA)
)
vs.) CASE NO. 82-36-CF-A-RMS
)
ROBERT HENDERSON)

NOTICE OF DEFENDANT'S INVOCATION OF THE RIGHT TO COUNSEL

I, ROBERT HENDERSON, hereby invoke and exercise my right to counsel pursuant to the 6th Amendment and 14th Amendment to the United States Constitution and Article I, Sections 9, 12 and 16 of the State of Florida Constitution and the case law thereunder.

I desire to have my attorney, the Public Defender, or one of his assistants, present before and during any questioning, interrogation, interviewing or other conversation whatsoever between myself and any police agency, prosecutor or agents thereof wherein there is any possibility that anything I say could be used against me.

I hereby announce my desire to have counsel present before anybody talks to me about any matters relating to this case or any other charges pending against me or any other criminal matter in which I am a suspect or can reasonably be expected to become a suspect based on anything I might say.

This notice is solely an exercise of my rights and in no way is to be construed as any direct or indirect admission of guilt or criminal liability.

I further state hereby that at no time in the future do I or will I waive (that is, give up) my right to have my attorney present unless and until, after adequate consultation with my attorney, I specifically waive (give up) all or part of my rights in written form.

Notice is hereby given by me and my undersigned attorney that I will litigate and seek sanctions and/or damages against anyone who violates or attempts to violate my constitutional and/or statutory rights invoked by me with this notice.

After being fully advised of my constitutional and statutory rights against self-incrimination by my attorney, I am signing this notice upon advice of counsel.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the Charlotte County Sheriff's Department, P.C., Fla. State Attorney's Office, Courthouse, Punta Gorda, Florida, and Public Defender's Office, Courthouse, Punta Gorda, Florida, this 7th day of February, 1982.

DOUGLAS R. HIDSLEY
Public Defender
P. O. Drawer 1980
Fort Myers, Florida 33902-1980

Robert Henderson
Defendant

By: [signature]
(Of Counsel)

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YOUR RIGHT

Pla Mount City P.D

Date 10 Feb 82

Time 1543 hrs.

Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advise before we ask you any questions, and to have him with you during questioning. You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court. If you wish to answer questions now without a lawyer present, you have the right to stop answering questions at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER

I have read the staement of my rights shown above. I understand what my rights are. Iam willing to answer questions and make a statement. I do not want a lawyer. I understand and know what I am doing. No promises or threats have been made to me and no pressure of any kind has been used against me.

I am aware that my attorney, in Charlotte County Florida, has instructed me not to speak with Law Enforcement Officers. I am also aware of my Constitutional Rights to disregard the instructions of my attorney and to speak with the Officers from Putnam County, Florida. I wish to exercise my rights and to speak with these officers.

Signed Robert D. Henderson

Witness _____

Witness _____

Time 1543 Hrs

R. C. Bobbe.

Joe Atchison

Rosalind Gayle Clark

NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires June 29, 1985

EXHIBIT "B"

Defendant

Of (County)

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IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR LAKE COUNTY, FLORIDA

STATE OF FLORIDA,

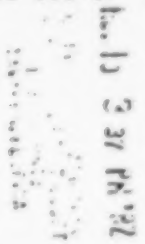
vs.

ROBERT DALE HENDERSON,

Defendant.

_____/

CASE NO. 82-898-CF



MOTION TO QUASH JURY VENIRE

THE DEFENDANT, ROBERT DALE HENDERSON, moves this Honorable Court to quash the venire drawn to serve as jurors in the above-styled cause and as grounds therefore would show:

1. Article I, Section 16 of the Florida Constitution provides in part: "In all criminal prosecutions the accused shall ... have a speedy public trial by an impartial jury ..."

2. Article I, Section 22 of the Florida Constitution provides in part: "The right of trial by jury shall be secure to all and remain inviolate."

3. One accused of a crime is entitled to a fair trial by a jury of his peers, State v. Lewis, 11 So.2d 337 (1943).

4. The Sixth Amendment of the United States Constitution guarantees to all persons the right to a trial by an impartial jury.

5. Florida Statutes dealing with jury qualifications provide in part as follows:

(a) F.S. Section 40.01 - Jurors shall be taken from the male and female persons at least eighteen (18) years of age who are citizens of the state and who are registered electors of their respective counties.

(b) F.S. Section 40.013(1) - No person who is under prosecution for any crime...shall be qualified to serve as a juror.

(c) Expectant mothers and mothers who are not employed fulltime with children under fifteen (15) years of age, upon request shall be excused from jury service.

(d) A presiding judge may, in his discretion, excuse a practicing attorney, a practicing physicial, or a person who is physically infirm from jury service.

(e) A person may be excused from jury service upon a showing of hardship, extreme inconvenience, or public necessity.

(f) A person who has served as a juror in any court in his county of residence within two (2) years of the first day of January in the calendar year for which he is being considered may, upon request and submission of a sworn affidavit that such service has been rendered, be excused from jury service.

6. Florida Statute Section 40.01 is unconstitutional, in that it restricts those persons permitted to serve as jurors to those who are citizens of Florida, and who are fully qualified electors of the county.

7. Florida Statutes Section 40.013(1) is unconstitutional, in that it excludes from jury service all persons under prosecution for any crime; such statutory exclusion would permit the State Attorney to limit those eligible for jury service by simply filing an information against those persons he did not want on a jury. Such statutory exclusions flies directly in the face of a constitutional right to the presumption of innocence in that a mere accusation foreclose the right and duty of jury service.

8. Florida Statute Section 40.013(4) is unconstitutional as a denial of equal protection and due process, in that it allows a very specific class of persons to be excluded from service where no rational basis for such classification exists.

(a) Said exclusion discriminates based on sex.

(b) Said exclusion discriminates based on age.

(c) Said exclusion discriminates based on employment.

(d) Said exclusion becomes operative only upon request of a juror at which time it becomes mandatory.

9. Florida Statute Section 40.013(5) is unconstitutional, in that it gives the presiding judge unbridled discretion to exclude from service certain classes of people based on the nature of their

employment or their physical condition.

10. Florida Statute Section 40.013(6) is unconstitutional on its face, in that it is vague, ambiguous, and contains no ascertainable standards by which excuses thereunder are to be granted or denied. Terms such as hardship, extreme inconvenience, and public necessity are so uncertain by definition that the inclusion or exclusion of jurors hereunder is left to the whim of the person authorized to grant such excuses. This exclusion is an unlawful delegation of legislative authority in the absence of any ascertainable standards.

11. Florida Statute Section 40.013(7) is unconstitutional, in that it creates a class of persons based on a standard which has no reasonable relation to the subject matter.

12. Neither the U.S., nor Florida Constitution restrict the selection of jurors in any manner and surely not in the manner set forth in Florida Statute Section 40.

13. The statutory qualifications and exclusions applicable to jurors denies the Defendant the right to select jurors from the community at large.

14. The Constitutional guarantees of Equal Protection and Due Process demand that a jury be selected from a fair cross section of the community, yet Florida Statute Section 40 prohibits such selection.

15. "It is part of the established tradidion in the use of juries as instruments of public justice that the jury be a body truly representative of the community."

Taylor v. Louisiana, 95 S.Ct. 692 (1975)

Smith v. Texas, 311 U.S. 128 (1940)

16. "The exclusion from jury service of a substantial and identifiable class of citizens, has a potential impact that is too subtle and too pervasive to admit of confinement to particular issues or particular cases. When any large and identifiable segment of the community is excluded fror jury service, the effect is to remove from the jury room qualities of human nature and varieties

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of human experience, the range of which is unknown and perhaps unknowable."

Peters v. Kife, 407 U.S. 493 (1972)

17. "When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the constitution have been violated."

Hernandez v. Texas, 347 U.S. 475 (1954)

18. Administrative Order 81-1 sets forth the procedures regarding disqualifications and excusals. A copy of said Order is attached hereto and incorporated herein by reference. Said Order is an unlawful delegation of judicial power, in that;

(a) Florida Statute Section 40.013 sets forth reasons that may disqualify a juror for service. Florida Statute Section 40.013(5) provides that prospective jurors satisfying this specific requirement (practicing attorney, practicing physician or a person who is physically infirm from jury service) may be excused by the presiding judge; the remainder of Section 40.013 is silent as to who has authority to excuse jurors from service.

(b) Section 40.23, F.S. (1979) sets forth the duties of the Clerk of the Court relative to prospective jurors. This portion of the Statute does not expressly grant the Clerk of the Court the authority to excuse prospective jurors under any circumstances.

(c) The Administrative Order confers the authority to excuse in all situations, except hardship, to the jury clerk.

WHEREFORE, based upon the facts and the law as expressed under Article I, Sections 2, 9, 16, and 22 of the Florida Constitution; the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Section 40.013 and 40.23, F.S., the Defendant respectfully requests that this Honorable Court quash the venire drawn to hear this cause.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to Bernie J. McCabe, Jr., Assistant State Attorney, Major Crimes Division, Office of the State Attorney, Lake County Courthouse, Tavares, Florida, this 15th day of November, 1982.

JOHN W. SPRINGSTEAD
Assistant Public Defender
Hernando County Courthouse
Brooksville, Florida 33512
(904) 796-1155

CHAPTER 40

JURORS AND PAYMENT OF JURORS AND WITNESSES

40.01 Qualifications of jurors.—Jurors shall be taken from the male and female persons at least 18 years of age who are citizens of this state and who are registered electors of their respective counties.

History.—s. 2, ch. 4115, 1891; ss. 1, 2, ch. 6122, 1901; GS 1370; RS 1571; s. 1, ch. 6431, 1913; RGS 2771, 2772; ss. 1, 2, ch. 12946, 1927; CGL 4441, 4444; s. 1, ch. 21418, 1941; ss. 1, chs. 26514, 26501, 26949, 1951; ss. 1, 2, ch. 67-154; s. 1, ch. 73-76; s. 1, ch. 79-210.

40.013 Persons disqualified or excused from jury service.—

(1) No person who is under prosecution for any crime, or who has been convicted in this state, any federal court, or any other state, territory, or country of bribery, forgery, perjury, larceny, or any other offense that is a felony in this state or which if it had been committed in this state would be a felony, unless restored to civil rights, shall be qualified to serve as a juror.

(2) Neither the Governor, nor any Cabinet officer, nor any sheriff or his deputy, municipal police officer, clerk of court, or judge shall be qualified to be a juror.

(3) No person interested in any issue to be tried therein shall be a juror in any cause; but no person shall be disqualified from sitting in the trial of any suit in which the state or any county or municipal corporation is a party by reason of the fact that such person is a resident or taxpayer within the state or such county or municipal corporation.

(4) Expectant mothers and mothers who are not employed full time with children under 15 years of age, upon request, shall be excused from jury service.

(5) A presiding judge may, in his discretion, excuse a practicing attorney, a practicing physician, or a person who is physically infirm from jury service.

(6) A person may be excused from jury serv upon a showing of hardship, extreme inconvenien or public necessity.

(7) A person who has served as a juror in a court in his county of residence within 2 years of t first day of January in the calendar year for which is being considered may, upon request and subm sion of a sworn affidavit that such service has be rendered, be excused from jury service.

(8) A person 70 years of age or older shall be cused from jury service upon request.

History.—s. 3, ch. 3010, 1877; s. 1, ch. 6015, 1911; RS 1149; GS 1372; s. 2774; CGL 4451; s. 2, ch. 28040, 1953; s. 7, ch. 73-334; s. 1, ch. 77-102; s. 1, 77-431; s. 4, ch. 79-235; s. 1, ch. 80-170.

Note.—Former s. 40.07.

40.015 Jury districts; counties exceedi 50,000.—

(1) In any county having a population exceed 50,000 according to the last preceding decennial c sus and one or more locations in addition to the co ty seat at which the county or circuit court sits a holds jury trials, the chief judge, with the approval a majority of the circuit court judges of the circuit authorized to create a jury district for each cou house location, from which jury lists shall be select in the manner presently provided by law.

(2) In determining the boundaries of a jury d trict to serve the court located within the district, t board shall seek to avoid any exclusion of any cog zable group. Each jury district shall include at le 6,000 registered voters.

History.—s. 1, ch. 79-114; s. 2, ch. 79-210.

40.02 Selection of jury lists.—

(1) The chief judge of each circuit, or a circ judge in each county within the circuit who is des nated by the chief judge, shall request the select of a jury list in each county within the circuit dur the first week of January of each year, or as so thereafter as practicable. The chief judge or his d ignee shall direct the clerk of the court to select random a sufficient number of names, with their dresses, from the list of persons who are qualified serve as jurors under the provisions of s. 40.01 and generate a list of not fewer than 250 persons to se as jurors, which list shall be signed and verified the clerk of the court as having been selected aforesaid. A circuit judge in a county to which he been assigned may request additional jury lists necessary to prevent the jury list from becoming exhausted. When the annual jury list is prepared pur ant to the request of a chief judge or his designee, lists prepared the previous year shall be withdra from further use. If, notwithstanding this provisi some names are not withdrawn, such error or irre larity shall not invalidate any subsequent proceed or jury. The fact that any person so selected had b on a former jury list or had served as a juror in a court at any time shall not be grounds for challe of such person as a juror. If any person so selec shall be ascertained to be disqualified or incompet

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

ORIGINAL

Supreme Court, U.S.
FILED
JUN 3 1985
ALEXANDER L. STEVAS
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

(2)

Case No. 84-6681

ROBERT DALE HENDERSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

JIM SMITH
ATTORNEY GENERAL

ELLEN D. PHILLIPS
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Avenue
Fourth Floor
Daytona Beach, Florida 32014

MEMBER OF THE UNITED STATES
SUPREME COURT BAR

(904) 252-2005

COUNSEL FOR RESPONDENT

95 pp

IN THE

SUPREME COURT OF THE UNITED STATES

Case No. 84-6601

ROBERT DALE HENDERSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

QUESTIONS PRESENTED

I. WHETHER THE FACTS PRESENTED REQUIRE THAT EDWARDS V. ARIZONA, 451 U.S. 447 (1981) BE REVISITED.

II. WHETHER A STATUTE ALLOWING PERSONS AGED 70 YEARS OLD OR OLDER TO BE EXCUSED FROM JURY SERVICE UPON THEIR REQUEST ESTABLISHES A VIOLATION OF PETITIONER'S RIGHT TO A FAIR AND IMPARTIAL JURY.

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TABLE OF AUTHORITIES

OPINION BELOW

Petitioner correctly recites that the opinion of the Florida Supreme Court is reported as 463 So.2d 196 (Fla. 1985). A copy of the opinion is attached hereto for the convenience of this court, as appendix pp. 1-6.

JURISDICTION OF THE SUPREME COURT

Respondent does not dispute the discretionary jurisdiction of this court as set forth by petitioner, but does deny that any special or important reason has been presented which warrants the exercise thereof.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner invokes the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution as relevant to this case.

STATEMENT OF THE CASE

Respondent accepts petitioner's statement of the case.

STATEMENT OF THE FACTS

Respondent generally accept petitioner's Statement of the Facts, but would add further particular facts surrounding the initiation of exchanges between petitioner and the authorities, as discussed in the Edwards question raised in Point I. The entirety of the pertinent testimony is set out in appendix pp. A-7-57(Investigator R.W. Bakker) and pp. A-58-77 (Detective William Hord).

Respondent has also included the evidentiary hearing pertinent to petitioner's second point (regarding the jury venire) as pp. A-79-93 of the appendix.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

I. THE FACTS OF THIS CASE PRESENT NO NEW ISSUE REQUIRING THAT EDWARDS V. ARIZONA, 451 U.S. 447 (1981) BE REVISITED; THERE WAS NO NEED TO SUPPRESS PETITIONER'S SEVERAL CONFESSIONS.

Petitioner's claim of an Edwards violation, in addition to being unfounded, presents no special or important reason for Edwards to be revisited; nor do the facts of this case present any new issue for this Court to decide or clarify. During the trip from Charlotte County to Putnam County, petitioner initiated various conversation on various incidental topics, including subtle comments indicating a desire to discuss the homicides (to which he had already confessed, and had turned himself in to Charlotte deputies)(A-19-20; A-21; A-54-55). The deputies declined to pick up on any of petitioner's comments about guns and hitchhikers, and consciously avoided discussing any matter relating to the homicides. (A-39; A-41; A-43; A-54). When the deputies stopped to check in with headquarters before taking petitioner to the jail, petitioner inquired as to what would be happening next (A-60). Thus, throughout the journey and at the specific time in question, petitioner initiated further communications with the officers. Oregon v. Bradshaw, 462 U.S. 1039 (1983). When Deputy Hord told him he was going to the Putnam County jail, petitioner looked surprised; his expression prompted Deputy Hord to ask "What it was he was trying to tell me." (A-60-61). This general, non-specific clarifying inquiry cannot be regarded as "interrogation," in that, objectively, no incriminating matter is being sought. See generally, Rhode Island v. Innis, 446 U.S. 291 (1980). When petitioner stated he wanted to help the deputies find the hitchhikers' bodies, he was advised "in great detail that he did not have to discuss that with [the deputies], and that if he did, he was going against the advice of the Public Defender Woodard." (A-22; A-49).

Petitioner signed a waiver of rights form (A-78), led the deputies to the bodies, and made various statements sought later to be suppressed.

There is no issue presented regarding the knowing and voluntary nature of the confession in this case; petitioner confessed several times to various murders, turned himself in to authorities, spoke to the press, and otherwise amply demonstrated his overt desire to confess his guilt and clear his conscience. Petitioner does not contend otherwise here. Thus, petitioner must rely on an assertion that the officers initiated interrogation, attempting to invoke a disputable "per se" rule that even knowing and voluntary statements must be suppressed where further communication, exchanges or conversations are initiated by the police. However, under Bradshaw, petitioner himself initiated the exchange here; further, no "interrogation" took place under Innis. These issues have already been addressed on facts very similar to those presented here, and no unsettled question of federal law is raised by this petition.

II. THIS COURT SHOULD DECLINE TO GRANT CERTIORARI BECAUSE THE PETITION ON ITS FACE DEMONSTRATES CONSTITUTIONALLY PERMISSIBLE GROUNDS FOR EXCUSING JURORS, AND DOES NOT ALLEGE ANY FACTUAL PREDICATE TO SUPPORT PETITIONER'S CLAIMS.

Petitioner's allegation that his jury was not drawn from a fair cross section of the community is frivolous on its face, for failing to even allege a factual basis sufficient to meet the tri-partite test of Duren v. Missouri, 439 U.S. 357 (1979) and Taylor v. Louisiana, 419 U.S. 522 (1975). There are no statistics indicating persons 70 years of age or older constitute a constitutionally significant class, nor is the percentage of such group in the venire revealed. Petitioner does not appear to contest the remaining permissible exclusions under section 40.013, Florida Statutes (1981); virtually all of such challenges have been resolved against petitioner. See generally, Reed v. Wainwright, 587 F.2d 260 (5th Cir. 1979). Voluntary

exclusion for persons over the age of 70 years of age is obviously rationally based; voluntary exclusion for persons over 65 was implicitly allowable in Duren.

Petitioner's assertion that delegation of authority to the clerk for excusals was "unauthorized" under the Florida Statute is patently a matter of state law. No federal right or interest is implicated in the procedure.

CONCLUSION

Petitioner presents no issue warranting review by this Honorable Court.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL

Ellen D. Phillips

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COUNSEL FOR RESPONDENTS

NO. 84-6681

IN THE

SUPREME COURT OF THE UNITED STATES

MAY TERM, 1985

ROBERT DALE HENDERSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CERTIFICATE OF SERVICE

I, ELLEN D. PHILLIPS, hereby certify that I am a member of the bar of the Supreme Court of the United States and that I have served copies of the Respondent's Brief in Opposition to the Petition for Writ of Certiorari to the Supreme Court of Florida in the above case on counsel for the petitioner by depositing same in the United States mail, first class mail, postage prepaid, addressed as follows:

Christopher S. Quarles
Assistant Public Defender
Seventh Judicial Circuit of Florida
112 Orange Avenue, Suite A
Daytona Beach, Florida 32014

All parties required to be served have been served.

Done this 31st day of May, 1985.

Ellen D. Phillips

ELLEN D. PHILLIPS
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125 N. Ridgewood Avenue, 4th Floor
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NO. 84-6681

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SUPREME COURT OF THE UNITED STATES

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ROBERT DALE HENDERSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

AFFIDAVIT

I, ELLEN D. PHILLIPS, Counsel for Respondent and a member of the Bar of this Court, depose and say:

1. That the enclosed Brief in Opposition to Petition for Writ of Certiorari was mailed first-class postage prepaid at the Downtown Station of the United States Post Office, Daytona Beach, Florida on May 31, 1985.

2. That the original Petition for Writ of Certiorari was received by the undersigned on May 1, 1985.

3. That the Brief in Opposition to the Petition for Writ of Certiorari was mailed within the permitted time and was therefore timely filed under Rule 28, Section 2, of the rules of this Court.

Ellen D. Phillips

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COUNSEL FOR RESPONDENT

federate, would be waiting in ambush to rob the victims of the rest of their money.' This briefly gives an indication of the character of the Defendant, Tommie L. Randolph.

In *Gibson v. State*, 351 So.2d 948 (Fla. 1977), Delores Walker and another young woman picked up two Brazilian seamen and invited them to their house to spend the night. This was at the suggestion of the defendant and another individual who planned to "roll" the seamen. Shortly after midnight the Brazilian seamen got into a car with the defendant and the two women. After they traveled a short distance Walker drove down a dark street and stopped the car. Gibson directed the two men to get out of the car and hand over their money. As one seaman got out of the car offering his money, Gibson shot him twice in the head. Gibson was twenty-eight years of age at the time of the crime. The trial court found that the murder was committed during the commission of an armed robbery, was committed for pecuniary gain, and was especially heinous, atrocious and cruel. This Court held that the trial judge improperly combined the armed robbery with the motive of pecuniary gain. Nevertheless the death sentence was upheld.

In *Foster v. State*, 369 So.2d 928 (Fla. 1979), two young girls met defendant and the victim at a bar. They knew defendant but the victim was a stranger. The defendant and the girls had planned for one of them to have sex with the victim and make some money. The vehicle was parked in a deserted area and after some conversation concerning compensation the victim and one of the girls began to disrobe. Defendant suddenly began hitting the victim and accusing him of taking advantage of his sister. Defendant then held a knife to the victim's throat and cut his neck, causing it to bleed profusely. The victim was still breathing so defendant took a knife and cut the victim's spine. The girls and defendant then drove off in the victim's Winebago and found the victim's wallet underneath a mattress. They split the money. The jury recommended a death sentence and the trial judge found that the murder was committed while defendant was engaged in the commission of a robbery and that the capital felony was especially heinous and atrocious. In our opinion we said:

> Before imposing the death sentence, the trial judge considered three psychiatric reports (with which defendant's attorney was familiar) and found that there were no mitigating circumstances sufficient to overcome the heinous nature of the homicide. The defendant committed the homicide in an effort to fulfill his intentions and complete his desire, i.e., "ripping the victim off." An elderly gentleman had agreed to go out and have some fun, but the price of such activity was his life. Defendant showed no compassion when he cut the victim's throat, beat him, dragged him into the woods, and cut his spine with a knife.

Foster v. State, 369 So.2d 928, 931

I would deny the petition for rehearing because it violates our Rules of Appellate Procedure. However, if we reconsider the sentence, other similar cases in which the death sentence was upheld would lead us to an affirmance of the reasoned judgment of judge and jury in the case before us.

BOYD, C.J., and ALDERMAN, J., concur.

Robert Dale HENDERSON, Appellant,

v.

STATE of Florida, Appellee.

No. 63094.

Supreme Court of Florida.

Jan. 10, 1985.

Rehearing Denied Feb. 28, 1985.

Defendant was convicted in the Circuit Court in and for Hernando County, L.R.

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Huffstetler, Jr., J., of three counts of first-degree murder, and he appealed. The Supreme Court, Boyd, C.J., held that: (1) there was sufficient evidence to support finding that defendant knowingly and intelligently waived his right to have counsel present when making his statements; (2) testimony concerning defendant's admission to being wanted in other states bore no relevance to any material fact at issue, but error in denying motion to exclude reference to crimes committed in other jurisdictions was harmless; (3) photographs of victims' partially decomposed bodies were relevant; (4) there was no error in denial of motion for mistrial; (5) provisions of statute pertaining to permissible excusals from jury service did not violate Sixth Amendment; (6) evidence that victims were bound and gagged and shot one by one execution-style supported finding that murders were especially heinous, atrocious or cruel and were committed in cold, calculated and premeditated manner without pretense of moral or legal justification; and (7) Florida's death penalty law is constitutional.

Affirmed.

1. Criminal Law ⇐412.2(4)

When accused asks to see counsel, interrogation must seise; however, there is nothing to prevent accused from changing his mind and volunteering further information.

2. Criminal Law ⇐412.2(5)

Stricter standard for showing that accused has knowingly and intelligently waived previous request for counsel is met when accused voluntarily executes written waiver.

3. Criminal Law ⇐414

There was sufficient evidence, including written waivers signed before making statements in question, to support finding that defendant knowingly and intelligently waived his right to have counsel present when making these statements.

4. Criminal Law ⇐369.1, 1169.11

Testimony concerning defendant's admission to being wanted in other states bore no relevance to any material fact at issue, but error in denying motion to exclude reference to crimes committed in other jurisdictions was harmless, where amount of evidence against defendant was overwhelming.

5. Criminal Law ⇐438(6)

Photographs of victims' partially decomposed bodies were relevant to show location of victims' bodies, amount of time that passed between murders and time when bodies were found, and manner in which they were clothed, bound and gagged.

6. Criminal Law ⇐338(1)

Persons accused of crimes can generally expect that any relevant evidence against them will be presented in court; test of admissibility is relevancy.

7. Criminal Law ⇐1144.12

It is not to be presumed that gruesome photographs will so inflame jury that they will find accused guilty in absence of evidence of guilt; rather, all jurors are presumed to be guided by logic and thus are aware that pictures of murder victims do not alone prove guilt of accused.

8. Criminal Law ⇐867

There was no error in denial of mistrial when trial judge, in advising jury of probable duration of trial, suggested that there would be second phase of trial concerned with sentencing and, upon objection by defense, gave curative instruction indicating that he only meant to estimate maximum period of time to be set aside for trial and had not made any judgment about what the evidence was likely to show.

9. Jury ⇐33(1.1)

Provisions of statute pertaining to permissible excusals from jury service did not violate Sixth Amendment, despite contention that statute operated to deny defendant right to be tried by jury drawn from venire representing "cross-section" of com-

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munity. West's F.S.A. § 40.013; U.S.C.A. Const.Amend. 6.

10. Homicide ⇐354

Evidence that victims were bound and gagged and shot one by one execution-style supported finding of aggravating circumstances that murders were especially heinous, atrocious or cruel and were committed in cold, calculated and premeditated manner without pretense of moral or legal justification.

11. Criminal Law ⇐1206.1(2)

Florida's death penalty law is constitutional.

12. Homicide ⇐354

Trial court properly found that there were no mitigating circumstances sufficient to outweigh aggravating circumstances supporting death sentence for three counts of first-degree murder.

13. Homicide ⇐354

Three sentences of death for three counts of first-degree murder were appropriate under law established in similar cases.

James B. Gibson, Public Defender, and Brynn Newton, Asst. Public Defender, Daytona Beach, for appellant.

Jim Smith, Atty. Gen., and Mark C. Menser, Asst. Atty. Gen., Daytona Beach, for appellee.

BOYD, Chief Justice.

This cause is before the Court on appeal of judgments of conviction on three counts of first-degree murder. Appellant Robert Dale Henderson was sentenced to death for each of the three capital offenses. Therefore, this Court has jurisdiction of the appeal. Art. V, § 3(b)(1), Fla. Const. Upon reviewing the record and considering appellant's arguments on appeal, we find no reversible error and affirm the convictions and sentences of death.

Appellant's murder convictions are based upon the deaths of three hitchhikers in Hernando County, Florida. Henderson turned himself in to the sheriff's office in Charlotte County, Florida, on February 6, 1982. He confessed to murdering three hitchhikers in northern Florida and to several other unrelated murders. He then requested counsel and signed a "Notice of Defendant's Invocation of the Right to Counsel."

On February 10, 1982, two Putnam County sheriff's deputies took custody of Henderson for an unrelated murder and were transporting him to Putnam County by automobile when Henderson volunteered to show them where the bodies of the three hitchhikers were. They advised him of his rights, after which he signed a waiver of rights form and led them to the field where the bodies were discovered.

The following June, a Hernando County detective took custody of Henderson in Putnam County for the purpose of transporting him to Hernando County to be tried for the murders of the three hitchhikers. At first Henderson said he did not want to talk because he had already given his statement to the other deputies. Later during the ride Henderson changed his mind and, after executing a written waiver, talked about the details of the murders.

Henderson filed two pretrial motions to suppress the statements he made to the Putnam County deputies and to the Hernando County detective. The motions alleged that the statements were elicited from him after he had invoked his right to remain silent by requesting an attorney. After holding an evidentiary hearing, the trial court denied the motions.

At trial a deputy sheriff of Charlotte County testified that he was responding to a call reporting an automobile burglary when Henderson motioned to him. When the officer approached, Henderson said he wanted to give himself up for murder and that he was wanted in several states. The officer testified that Henderson surrendered a bag containing a .22 caliber revolver which Henderson said was the murder weapon. After the officer arrested Henderson and advised him of his constitution-

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al rights, Henderson said that he had killed three hitchhikers in north Florida.

Another Charlotte County deputy sheriff testified that he interviewed Henderson after advising him of his constitutional rights. According to this witness, Henderson said that he shot all three hitchhikers in the head and dumped their bodies in a remote area south of Perry, Florida.

One of the Putnam County sheriff's deputies testified about Henderson's showing him the location of the bodies. The Hernando County detective testified that when he was transferring Henderson from Putnam to Hernando County, Henderson agreed to talk and gave details of the murders. A transcript of Henderson's confession was read to the jury. According to the transcript, Henderson said he picked up the hitchhikers, two male and one female, near Panama City and became concerned when he heard two of them talking about killing someone to get some money. Henderson was quoted as saying that he bound and gagged the three hitchhikers and shot them each in the head with a .22 caliber revolver.

There was substantial medical and scientific testimony corroborating Henderson's confessions. The medical examiner testified that the victims, two male and one female, had each died of a gunshot wound to the head. A firearms expert testified that the bullet fragments found in the victims had the same rifling characteristics as did bullets shot from the .22 caliber revolver found in Henderson's possession when he was arrested. Crime scene investigators testified that the victims' bodies were found bound and gagged with tape in the manner described in Henderson's statements.

The defense rested without presenting any evidence. The jury found Henderson guilty of three counts of first-degree murder.

At the penalty phase of the trial, the state presented evidence of Henderson's prior convictions for two counts of first-degree murder. The state also called the Hernando County detective who testified that Henderson told him he had no regrets and that if he had his life to live over again, he would not change anything. The defense presented evidence that Henderson was abused as a child and that he showed the police the location of the victims' bodies so they could be buried.

The jury recommended that Henderson be sentenced to death. The trial judge adopted the jury's recommendation and found as aggravating circumstances that Henderson had previously been convicted of a violent felony; that the murders were especially heinous, atrocious, or cruel; and that they were committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. The judge found there was no evidence of any statutory mitigating circumstances and that the nonstatutory mitigating circumstances presented were of little if any weight.

[1–3] Henderson's first point on appeal claims error in the denial of his pretrial motions to suppress the statements he made to the Putnam County deputy and the Hernando County detective. Henderson claims that these statements were improperly elicited from him after he had requested the assistance of counsel. It is true that when an accused asks to see counsel, interrogation must cease. *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981). However, there is nothing to prevent an accused from changing his mind and volunteering further information. "The stricter standard for showing that an accused has knowingly and intelligently waived a previous request for counsel is met when the accused voluntarily executes a written waiver." *Cannady v. State*, 427 So.2d 723, 729 (Fla.1983). In this case Henderson signed written waivers before making the statements in question. We therefore conclude that there is sufficient evidence to support the finding that he knowingly and intelligently waived his right to have counsel present when making these statements.

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Next Henderson argues that the trial judge erred in denying in part his motion in limine to exclude references to unrelated crimes committed in other jurisdictions. In response to Henderson's motion, the state averred that the only evidence of collateral crimes it anticipated introducing was the statement Henderson made to the arresting officer that he was turning himself in for murder and that he was wanted in several states. The trial court ruled that this statement was admissible.

[4] We agree with Henderson's contention that the testimony concerning his admission to being wanted in other states bore no relevance to any material fact at issue in this case. Hence his motion to exclude all references to crimes committed in other jurisdictions should have been granted. However, we find that the error was harmless and could not possibly have affected the outcome of the case. The amount of evidence against Henderson is simply overwhelming. There were at least four confessions to four different police officers. There was also substantial circumstantial evidence linking him to the crime and corroborating his confessions. Given the magnitude of this evidence, we do not believe that the jury was unduly or improperly influenced by the evidence that Henderson admitted to being wanted in other states.

[5-7] Next Henderson argues that the trial court erred by allowing into evidence gruesome photographs which he claims were irrelevant and repetitive. We find that the photographs, which were of the victims' partially decomposed bodies, were relevant. Persons accused of crimes can generally expect that any relevant evidence against them will be presented in court. The test of admissibility is relevancy. *Adams v. State*, 412 So.2d 850 (Fla.), *cert. denied*, 459 U.S. 882, 103 S.Ct. 182, 74 L.Ed.2d 148 (1982); *Straight v. State*, 397 So.2d 903 (Fla.), *cert. denied*, 454 U.S. 1022, 102 S.Ct. 556, 70 L.Ed.2d 418 (1981). Those whose work products are murdered human beings should expect to be confronted by photographs of their accomplishments. The photographs were relevant to show the location of the victims' bodies, the amount of time that had passed from when the victims were murdered to when their bodies were found, and the manner in which they were clothed, bound and gagged. It is not to be presumed that gruesome photographs will so inflame the jury that they will find the accused guilty in the absence of evidence of guilt. Rather, we presume that jurors are guided by logic and thus are aware that pictures of the murdered victims do not alone prove the guilt of the accused. We therefore conclude there was no error in allowing the photographs into evidence. *Aldridge v. State*, 351 So.2d 942 (Fla.1977), *cert. denied*, 439 U.S. 882, 99 S.Ct. 220, 58 L.Ed.2d 194 (1978); *Jackson v. State*, 359 So.2d 1190 (Fla.1978), *cert. denied*, 439 U.S. 1102, 99 S.Ct. 881, 59 L.Ed.2d 63 (1979); *Swan v. State*, 322 So.2d 485 (Fla.1975).

[8] Henderson argues that the trial judge erred when, in advising the jury of the probable duration of the trial, he suggested that there would be a second phase of the trial concerned with sentencing. Because a sentencing phase would only be required upon conviction of a capital offense, appellant argues that the statement indicated to the jury that the judge thought appellant would be found guilty of at least one of the charged first-degree murder counts. Upon the raising of an objection by the defense, the judge gave a curative instruction indicating that he only meant to estimate the maximum period of time to be set aside for the trial and had not made any judgment about what the evidence was likely to show. Defense counsel moved for a mistrial and now argues that the denial of the motion was reversible error. We find the argument to be completely without merit.

[9] Henderson also argues that several of the provisions of section 40.013, Florida Statutes (1981), pertaining to permissible excusals from jury service, operated to deny him the right to be tried by a jury drawn from a venire representing a "cross-section" of the community. *See Taylor v.*

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Louisiana, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975). He relies on *Alachua County Court Executive v. Anthony*, 418 So.2d 264 (Fla.1982). That decision held that the exemption for mothers with small children was faulty on equal protection grounds for not treating similarly situated fathers the same way. The sixth amendment was not involved in that case and we do not read it as announcing any right of defendants that would support appellant's argument here. We find appellant's challenge to be without merit. *Hitchcock v. State*, 413 So.2d 741 (Fla.), *cert. denied*, 459 U.S. 960, 103 S.Ct. 274, 74 L.Ed.2d 213 (1982); *McArthur v. State*, 351 So.2d 972 (Fla.1977).

[10] With respect to his sentence, Henderson argues that the trial judge erred in finding that the murders were especially heinous, atrocious or cruel. Henderson claims that the murders were not heinous, atrocious, or cruel because the victims died instantaneously from single gunshots to their heads. This argument overlooks the fact that the victims were previously bound and gagged. They could see what was happening and obviously experienced extreme fear and panic while anticipating their fate. We therefore conclude that this aggravating circumstance applies. *White v. State*, 403 So.2d 331 (Fla.1981), *cert. denied*, — U.S. —, 103 S.Ct. 3571, 77 L.Ed.2d 1412 (1983); *Knight v. State*, 338 So.2d 201 (Fla.1976).

Appellant also argues that the court erred in finding that the murders were committed in a cold, calculated and premeditated manner without any pretense of moral or legal justification. We hold that there was sufficient evidence to support the trial judge's finding of this factor. Henderson rendered the victims helpless by binding their ankles with tape. He then coldly proceeded to shoot them one by one execution-style.

[11] Finally Henderson argues that Florida's death penalty law is unconstitutional. However, all his arguments have previously been refuted by this Court on a number of occasions and therefore do not merit any further discussion.

[12] In conclusion, the properly established aggravating circumstances are:

1. Appellant had previously been convicted of two counts of first-degree murder.

2. The murders were all heinous, atrocious, and cruel.

3. The murders were all committed in a cold, calculated, and premeditated manner without pretense of moral or legal justification.

The trial court properly found that there were no mitigating circumstances sufficient to outweigh the aggravating circumstances found.

[13] We therefore affirm the convictions on three counts of first-degree murder. Finding that the three sentences of death are appropriate under the law established in similar cases, we affirm them also.

It is so ordered.

ADKINS, OVERTON, ALDERMAN, McDONALD, EHRLICH and SHAW, JJ., concur.

Raymond KOON, Appellant,

v.

STATE of Florida, Appellee.

No. 63322.

Supreme Court of Florida.

Jan. 10, 1985.

Rehearing Denied March 4, 1985.

Defendant was convicted in the Circuit Court, Collier County, Charles T. Carlton, J., of first-degree murder, and direct appeal

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THEREUPON,

R. W. BAKKER,

a witness called on behalf of the State of Florida, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McCABE:

Q State your name, please, sir.

A R. W. Bakker.

Q And how are you employed?

A I'm an investigator for the Putnam County Sheriff's office.

Q And how long have you been a police officer?

A About 20 years.

Q All right. Is it Investigator Bakker?

A Yes, sir.

Q Investigator Bakker, were you involved in the investigation of a homicide of one Dr. Murray Ferderber?

A Yes, sir.

Q And how were you involved in that?

A I was assigned that case, along with another officer.

Q All right. And, just briefly, did you go to the scene of that particular crime?

A Yes, sir, I did.

Q And describe for the Court, please -- and that was i

Putnam County, Florida?

A Yes, sir.

Q Describe for the Court, in essence, what the scene was like when you first arrived there.

A It was a double wide trailer with an attached fence -- I mean a screen enclosure on the front. We entered the double wide trailer through a sliding glass door. By the sliding glass door was a chair with the back to the sliding glass door. In the chair was Dr. Ferderber sitting upright with his head slumped over and a phone book in his hand.

MR. SPRINGSTEAD: Your Honor, if I may interrupt, I believe there are other witnesses also in the back of the courtroom. I would like to invoke the rule at this time.

THE COURT: All right. The rule has been invoked. Those of you that are here in any matters involving Robert Dale Henderson, if you'll remain outside the courtroom and not discuss any testimony with anyone other than counsel.

BY MR. McCABE:

Q Did your investigation reveal the cause of death for Dr. Ferderber?

A Yes, sir.

Q And what was that?

A A single gunshot wound to the back of the head.

Q All right. Were you able to determine caliber?

A It was small in caliber and resembled that of a .22.

Q Now, did your investigation -- well, first of all, what was the approximate date of that crime?

A I didn't bring that report.

Q All right. Well, let me direct your attention --

A That was prior to --

Q Let me direct your attention, then, to February 6, 1982. Did you receive communications from Charlotte County on that date regarding that homicide?

A My department did, correct.

Q All right. And subsequently did you become aware of that?

A Yes, sir. I was instructed to go to Charlotte County.

Q All right. Now, what information was relayed to you regarding what had occurred in Charlotte County?

A I was informed that a subject had turned himself in to the Charlotte County authorities and admitted to two homicides in Putnam County.

Q All right. What particular description of the homicide in Putnam County was given to you based on the information from Charlotte County?

A An elderly doctor in the south end and an older

woman in a western shop.

Q Now, did you review your records to see if you had homicides that coincided with the information from Charlotte County?

A Both were investigated on the same day.

Q And regarding the elderly doctor on the south side, were you given any facts or any details of what the Charlotte County authorities had found out from the person they had in custody?

A Other than an elderly doctor, which was a retired doctor. No one knew he was a doctor except someone who might have been in the house.

Q Okay. He was not -- he didn't have a sign out front with "doctor's office" or anything?

A He wasn't a practicing doctor, no, sir.

Q He was retired.

A He was retired.

Q Okay. And who was it that supposedly was admitting to this particular offense?

A Robert Dale Henderson.

Q Based on that information, what did you do?

A I proceeded to Charlotte County.

Q Well, did you get a warrant first?

A The first time I went down there, I didn't have a warrant.

FORM FL-9 APPROVED PAPER & SUPPLY CO 800 826 0315

Q Okay. What did you do in Charlotte County the first --

A The first time?

Q Yes.

A I was hoping to interview Mr. Henderson, but at that time I was instructed that he wasn't talking to anybody.

Q Okay. What did you do then?

A I informed my authorities -- my captain of Mr. Henderson's decision and proceeded back to Putnam County.

Q Okay. And what steps did you take at that point?

A On the 9th a warrant was issued by Judge Warren, at which time Chris Hord and myself proceeded on back down to Charlotte County.

Q Let me show you what has been attached to the defendant's second motion to suppress, which purports to be a complaint affidavit.

MR. McCABE: Mr. Springstead, can I refer to this based on the fact that you filed it?

MR. SPRINGSTEAD: Yeah, fine. I just -- that's part of my motion. I think it's unsealed from the Clerk's Office from Putnam County.

BY MR. McCABE:

Q Do you recognize that? It says, "This is the affidavit ---"

A We consider it 751, complaint affidavit requesting a

warrant.

Q All right. Did you sign that?

A Yes, sir, I did.

Q All right. And you swore to the things that were contained in there?

A I swore to the things contained in there, yes. Also noted that I was also sworn again to it at the State Attorney's office.

Q Okay. And, briefly, reading from this, does this sound familiar to you? It charges that "Robert Dale Henderson did unlawfully from a premeditated design effect the death of a human being killed and murdered, Murray Bernard Ferderber, a human being, by shooting Ferderber in the head." Is that what you swore to?

A Yes, sir.

Q You felt you had probable cause?

MR. SPRINGSTEAD: Objection. I think that's an opinion, Your Honor. It's irrelevant in these proceedings. It's up to the Court to determine whether or not there was probable cause. This officer is just to testify to what's contained in the affidavit.

MR. McCABE: Your Honor, I didn't ask if he had probable cause. I asked if he felt he had probable cause

MR. SPRINGSTEAD: Well, it's the opinion that I object to, Your Honor. It's irrelevant.

FORM FL-9 REPORTERS PAPER & MFG CO 800-826-8313

THE COURT: Overruled.

BY MR. McCABE:

Q Do you feel you had probable cause?

A Yes, sir.

Q Based on what?

A Based on the information obtained from Charlotte County.

Q Was there anything in the information from Charlotte County that differed from the facts that you had regarding the death of Dr. Ferderber?

A They differed? No, sir.

Q Now, you went, I believe, to Judge Warren with this affidavit.

A Yes, sir.

Q All right. What happened at Judge Warren's office?

A First I went to the State Attorney's office, the Assistant State Attorney, the chief, State Attorney for that circuit. We went up to -- he typed out a warrant and we went up to see Judge Warren.

Q Well, what happened in Judge Warren's --

A We swore to the affidavit in front of Judge Warren, at which time Judge Warren asked me particulars about it, and I explained to him what had -- information that had been developed from Charlotte County, as well as to the homicide that we had in Putnam County.

FORM FL-9 STENOTYPE CASE & MFG CO 800-874-8313

MR. SPRINGSTEAD: Your Honor, at this time I'm going to object to anything he might have told Judge Warren that's not contained within the document that he has already identified as Form 751. The basis for that motion is based on the Constitution and the case law that interprets that Constitution that indicates that oral testimony cannot be used to determine probable cause. The Constitution indicates that no warrant shall be issued except on probable cause supported by affidavit people describing places or persons or things to be seized. It indicates in interpreting that that it requir a written affidavit, and so I object to any oral testimony that may have transpired with Judge Warren. I think the State's relegated to the limitations of Form 751.

MR. McCABE: Your Honor, I think we're way ahead of ourselves on legal argument. Briefly, the appropriate Florida rule of criminal procedure and the appropriate statute both permit oral testimony. The case that Mr. Springstead is relying on is the constitutional basis that deals with a search warrant. It does not deal with an arrest warrant. The plain reading of the constitutional provision that he just recited says that it must specifically -- the affidavit must specifically state the person or persons to be seized. This affidavit

does state the person or persons to be seized with particularity. I think I'm permitted by statute in the rule -- and I will cite this for you if the Court desires -- to elicit the oral testimony taken by Judge Warren.

MR. SPRINGSTEAD: I just want to preserve the objection, Your Honor. You know, I guess Mr. McCabe wants to proceed.

THE COURT: All right. I will overrule your objection at this time.

BY MR. McCABE:

Q Did Judge Warren place you under oath?

A Yes, sir.

Q What did you tell him in addition to the affidavit that you submitted?

A I told him that we had received information from Charlotte County as to one Robert Dale Henderson admitting to a homicide in Putnam County naming the elderly doctor that had been shot, and we knew that the weapon that had been recovered was a .22 caliber weapon, which he had turned in.

Q Henderson turned it in?

A Yes, sir. And based on the evidence of the other homicide, only a person would have known both of them because it hadn't been in the paper until -- or just the local paper at that time that it was an elderly woman in a western store, as well as an old doctor in his house.

Q Let's delve into the elderly woman in the western store. I understand you didn't get a warrant for that particular offense at that time, but what were the essential facts of that?

A That she was also shot in the head, but at the first autopsy the doctor -- pathologist didn't find a hole.

Q So there hadn't been any publicity at all about the elderly woman at the western store being shot?

A Right, being murdered.

Q Was it subsequently determined that she had been shot?

A After Mr. Henderson telling Charlotte County.

Q Was there a new autopsy done because of that?

A Yes, sir.

Q Now, were there any other elderly doctors that had been shot recently up there in Putnam County that this admission could have referred to --

A No, sir.

Q -- on the south side?

A On the south end. I consider the south end to be the east side of the St. Johns River there in an area called Satsuma or Palatka area.

Q I'm going to show you what's also attached to the defendant's motion to suppress, which purports to be a copy of an arrest warrant, and ask you to look at that.

A Yes, sir. This is the article that was typed up at the State Attorney's office.

Q Is that the arrest warrant that was issued by Judge Warren?

A Yes, sir.

Q After having had the arrest warrant issued, what steps did you take?

A Both Investigator Chris Hord and myself left for Charlotte County.

Q All right.

A And we spent the night halfway down. We arrived the morning of the 10th at the Charlotte County Sheriff's office.

Q All right. And what did you do at the Charlotte County Sheriff's office?

A I contacted Investigator Lucas.

Q And tell me what happened.

A I gave him the warrant. He called Mr. Henderson out of the cell, read him the warrant, told him he had another hearing to go to, at which time the Charlotte County authorities transported him to a hearing at the courthouse.

Q Did you go to the hearing at the courthouse?

A Yes, sir.

Q What happened there?

A He was read the warrant by the judge, at which time

he was remanded to our authority -- to our custody.

Q So the judge in Charlotte County read him that warrant and turned him over to y'all?

A Yes, sir.

Q And is Mr. Henderson in the courtroom today?

A Yes, sir, he is.

Q Would you point him out, please?

A The gentleman with the beard (indicating). Well, the second without the jacket.

Q Thank you. All right. What did you and Detective Hord do with Henderson now that he was in your custody?

A At which time I read him his rights and we transported him.

Q Did you read him his rights from a card?

A Yes, sir.

Q And what were you transporting him in?

A I transported him in our county car.

Q Okay. Now, about how far is it from Punta Gorda, which, I believe, is the county seat of Charlotte County, to Palatka, which, I believe, is the county seat of Putnam County?

A Four and a half - five hours, something like that. I don't recall the exact time.

Q So you started out on your journey back. Right?

A Yes, sir.

FORM FL-9 STENOTYPE PAPER & MFG CO 800 628 8313

Q Tell me what occurred during the journey back.

A We just carried on just a normal conversation. Whatever Mr. Henderson wanted to talk about, we talked about.

Q Now, had you been presented with any document purportedly signed by Mr. Henderson indicating that he didn't want to talk to you?

A Yes, sir, we were.

Q All right. I show you what has been attached to defendant's first motion to suppress, which purports to be a notice of defendant's invocation to the right of counsel, and ask you to look that over.

A Yes, sir. This was given to us by Mr. Woodard, the Public Defender representing Mr. Henderson.

Q All right. What was the basic gist of that?

A The basic gist was that he did not -- he had talked to his attorney and that he elected not to discuss any criminal matter with me or anybody else.

Q Okay. And you were aware of this?

A Yes, sir.

Q Well, when you started back on the road to Palatka, did you try to talk to him?

A Not about any criminal matter at all. He struck up plenty of conversations. We talked about hunting, camping, and just anything that was in the air except any criminal matter.

FORM FL 9 STENOTYPE PAPER & SUPPLY CO (800) 226-8313

Q Just casual conversation?

A Yes, sir.

Q Now, did something occur on the way back to Palatka indicating to you that he desired to do otherwise?

A He kept on making subtle comments that we felt -- I felt that he wanted to discuss the matter with us.

Q What were the comments he made that led you to that conclusion?

A Well, about hitchhikers, for one.

Q All right. What significance did hitchhikers have?

A How dangerous it was.

Q Why did that have some significance to you?

A We knew of the deaths over here.

Q How did you know of that?

A I was told about them. I don't remember exactly what happened, but Charlotte County -- let me think. We knew about them. I forgot who told me about it.

Q You knew there was something to do with hitchhikers?

A That there had been three deaths.

Q Okay. Now, what other comments did he make?

A About hunting, fishing, how good a shot he was, how he liked to use a .22, that he could shoot turkeys in flight, pigeons on the run.

Q Anything else?

A I don't -- it just was idle conversation.

Q What led you to believe he wanted to talk with you?

A Just -- he said if he acted like -- he said he had a headache, something on his mind, something was bothering him. He said that he hadn't slept lately as if he was having pressure from a headache that was bothering him, his conscience was bothering him, whatever.

Q Is that what he told you?

A Yeah. He said he hadn't slept because he had continuous headaches, you know.

Q Did you say anything to him?

A Yeah. I told him, you know, we could get some aspirin for him or whatever he wanted.

Q What happened when he -- tell me what led up to him finally talking to you.

A Well, we arrived at Crescent City, and prior to Crescent City I was instructed by Captain Miller to call him. I called Captain Miller from the Crescent City Police Department.

Q What was that for?

A The captain wanted to talk to me.

Q Okay.

A I had no longer got on the phone with Captain Miller when Investigator Chris Hord came back in. He remained with Mr. Henderson in the patrol car. Chris Hord came back and said that Mr. Henderson wanted to discuss our

homicide, as well as help to locate the bodies of the three people in what we thought was Citrus County at that time.

Q All right. What did you do at that point?

A I told Captain Miller, "Wait a minute," and I went back out there and I re-advised him of his rights. I told him in great detail that he did not have to discuss that with me, and that if he did, he was going against the advice of the Public Defender Woodard. He said he wanted to discuss that matter and that he was concerned about the proper burial of the three.

Q Okay.

A So I took the rights form, read him his rights again. I read everything on the rights form to him, and then he read everything in front of the witnesses, at which time he signed it, I signed it, Investigator Chris Nord signed it, Joe Anderson signed it, and Rosalyn Gail Carter (sic), which was a notary, notarized it.

Q Now, there appears to have been some alterations made or additions to the rights form, particularly the last paragraph. Where was that done?

A That was done in Putnam County.

Q Crescent City?

A No, sir. At the sheriff's office before I left just in case he decided that he wanted to have an attorney and wanted to waiver -- go against the rights of whatever the

attorney said to do.

Q All right. So you had that with you?

A Yes, sir.

Q All right. Read the form as you read it to him.

A From the beginning to the end?

Q Yes, sir.

A "Before we ask you any questions you must understand your rights. You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to talk to a lawyer for advice before you answer any questions and to have him present during the questioning. You can have this right to advice and presence of a lawyer even if you cannot afford to hire one. We have no way to give you a lawyer, but you will be appointed one if you wish if and when you go to court. If you wish to answer the questions now without the lawyer present, you have the right to stop answering the questions at any time. You also have the right to stop answering at any time until you talk to a lawyer."

The waiver -- this first portion of the waiver wasn' included on the original document.

Q All right.

A "I have read the statements of my rights shown above. I understand what my rights are and I am willing to answer the questions and make statements. I do not want a

FORM FL-9 REPORTERS PAPER & MFG CO 800 858 6313

lawyer. I understand and know what I'm doing. No promises or threats have been made to me and no pressure of any kind has been used against me." This is the portion that was typed in at the sheriff's office. "I am aware that my attorney in Charlotte County has instructed me not to speak with the law enforcement officers. I am also aware of my constitutional rights to disregard the instructions of my attorney and to speak with the officers of Putnam County. I wish to exercise my rights and to speak to these officers." Signed Robert Dale Henderson.

Q Now, was all of that there before he signed it?

A Yes, sir.

Q Did he appear to understand it?

A Yes, sir. I went in great detail until he fully understood it.

Q Did he appear to be under the influence of any drugs or alcoholic beverages?

A No, sir.

Q Now, after he executed that particular rights waiver, what did you do?

A He signed it, and then we proceeded to see if he could direct us towards Dr. Perderber's residence, which he did.

Q And did you have conversations with him after that?

A We talked along the way and after we found

Dr. Forderber. Before we got there he said, "It'll be a residence on the left down this dirt road."

Q Without going through all of his statements about everybody he killed, direct your attention, please, to what statements he made regarding the three hitchhikers.

A Okay. This was after we had finished up with the last one, the western store. We were instructed not to go to the sheriff's office because the press was there and that we would meet Captain Miller at the back of the Clock Restaurant. And Mr. Henderson agreed to take us and show us where the three bodies were so that they could have a proper burial, but he also was explicit that he did not want us to discuss any elements of the crime with us or what we felt was Citrus County authorities at that time.

Q Okay. So what did you do?

A Well, we proceeded to the Clock. We got him cigarettes, another pair of shoes, some hamburgers, coffee, and then Paul Usina, the lieutenant, came up. Since we had been driving all day and figured it would be quite lengthy, the captain suggested that Paul Usina go along with us to do the driving. And we asked Mr. Henderson if it was okay if Paul came in the vehicle and Mr. Henderson did not object to it, at which time Paul started to drive.

Q Okay.

A And then we proceeded at his directions to the

different roads in Charlotte County (sic) trying to locate this area --

Q You mean Citrus County?

A -- Citrus -- excuse me -- Citrus County trying to locate this area. We contacted the Citrus authorities and explained the highway system, which Mr. Henderson explained it was a split highway and that this area was a pretty well isolated area off this road. We figured it was only one or two areas either north of -- I believe we were in Crystal River -- north of there or south of there. We proceeded South, passed out of Citrus County into Hernando County, at which time Mr. Henderson said, "This looks familiar." So we tried the first dirt road to the right, went down there, and it dead ends and there was a house down there. He said, "No. This ain't it."

We went back out and went one more block south and back in again, at which time he directed us to a left. And as we approached the end of this road, which was a cul-de-sac, he said, "There's a blue cup that we used to drink out of," drawing our attention to like a blue, plastic cup that you might get cold drinks in or something, at which time we stopped just before the cup. I stayed with Mr. Henderson, and at the directions of Mr. Henderson, the officers proceeded forward, at which time they found -- I think they found two bodies. We backed off not to mess up the scene.

Citrus County had already notified Hernando County, and we told them that we were leaving. At that time we started backing out and Hernando County started to arrive. As we left, it was blocked off by the Hernando County deputies, the main road. They let us out and we proceeded back to Putnam County.

Q Okay. So you didn't stay around for the discovery of the third body.

A The third body was discovered, but at which time we didn't let anybody approach Mr. Henderson.

Q So nobody tried to communicate or talk with him or anything.

A We wouldn't let them because he didn't want it that way.

Q Because he didn't want it.

A That's right. We instructed the Citrus County boys when we first talked to them that Mr. Henderson was willing to help us locate the bodies, but he did not want to discuss the case so no interrogation would be allowed.

Q And why, again, did he express to you that he wanted to help find the bodies?

A So they could have a proper burial.

Q Had you suggested that to him?

A I think he brought up "burial" and I might have brought up "proper."

Q Okay. How did he bring up burial?

A He said, "Find them so they can be buried." I mean that's not an exact quotation, but, in essence, that's what he said.

Q But it was his idea.

A Yes.

MR. McCABE: Just a moment, Judge.

BY MR. McCABE:

Q Now, Investigator Bakker, was Mr. Henderson subsequently indicted by the Putnam County Grand Jury for the two homicides that he admitted to in Putnam County?

A Yes, sir.

Q And what happened to those cases?

A He pled guilty to both of them.

Q And has he been sentenced?

A Yes, sir.

MR. McCABE: I have no further questions, Judge.

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. SPRINGSTEAD:

Q Good morning, Sergeant Bakker.

A Good morning, sir.

Q I'll try to make it as brief as I can. I know you've got to get back to Putnam County.

Sergeant Bakker, you indicated that pursuant to

FORM NO. 8 HOOVER PAPER MFG CO 800-826-8313

information you had received from Charlotte County you filled out Form 751. Is that correct?

A The information, like I said, was received by Captain Miller, which told me.

Q All right. So the information you had was from Captain Miller.

A Correct.

Q Okay. So I assume at that point Captain Miller worked for the Putnam County Sheriff's Department. Is that correct?

A He's chief of detectives, yes, sir.

Q Now, he didn't go down to Charlotte County and gather any information, did he?

A No, sir, he did not.

Q So whatever he knew about Henderson at that time he would have gotten second hand out of Charlotte County from their department. Is that correct?

A From their department, correct.

Q Okay. Now, if Captain Miller got the information, why didn't he fill out Form 751 instead of you?

A Because it was my investigation, the Dr. Ferderber case.

Q Is it your testimony you did not contact the Charlotte County deputies directly?

A That day I went down upon receipt of the information

I left that day to Charlotte County and contacted Investigator Lucas, and he subsequently turned over all of the reports, as there were quite a few other agencies there, and then he gave us copies of whatever they determined at that time or whatever was told to them.

Q Okay. And you indicate these reports had to do with the Putnam County matters?

A Well, several of them were just in great detail as to everything, but also involved the Putnam County matter.

Q Okay. So when you went down to Charlotte County, you weren't able to get any statements or any further information from the defendant. Is that correct?

A Correct.

Q And so you were relegated, basically, just to the information that had been obtained by the Charlotte County people.

A Yes, sir.

Q Okay. And could you recite for the Court what that information was? I assume you talked to them again while you were down there.

A I talked to Investigator Lucas, who said that Mr. Henderson admitted shooting two people in Putnam County. One was a woman in a western store and the other was an elderly doctor. They provided him a map and he pointed out the area, which was Palatka, the City of Palatka. I don't believe the

map reflected East Palatka or Satsuma. Based on that information, Investigator Lucas or another representative had called up my department and talked to Captain Miller.

Q But, in fact, they did not know that the bodies were in Putnam County, did they?

A They assumed that -- when they called up they found out they admitted to several homicides in the Palatka area, that being Putnam County, and then called the sheriff's office. And Captain Miller confirmed we, in fact, did have one homicide. When they brought up the lady in the western store, we said that a lady had died in there.

Q The point being that the Charlotte County authorities did not indicate to you that they had obtained information that, in fact, two homicides had occurred in Putnam County. The deduction that the homicides had occurred in Putnam County came from your office when you were able to match up the death of a woman in a western wear shop and an elderly doctor. That's when it first was realized that, in fact, it was Putnam County. Is that correct?

A Except when Mr. Henderson pointed out Palatka and said, "That's where it occurred."

Q Near Palatka. Obviously, it didn't occur in Palatka.

A Right.

Q Near Palatka.

FORM FL-9 STENOTYPE REPORTERS SERVICE CO ORLANDO 851-3

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A Right.

Q But the point I'm trying to say is I believe you stated earlier on direct examination that you were told that there had been two homicides in Putnam County when, in fact, that's not really what you were told. You were told that there had been two homicides near Palatka.

A Right.

Q The fact that it was in Putnam County was a deduction you made.

A Okay. Well, Palatka is kind of centered up in the middle of Putnam. It's a very large area.

Q But I believe it's important, I think, that you made the determination that it was in Putnam County, not the Charlotte County people.

A Okay.

Q Is that correct?

A The end result was that we had one death and one homicide that fit the same thing as what was related to the Charlotte County authorities.

Q But Charlotte County -- what I'm trying to say, Officer Bakker, is Charlotte County did not call you and say, "We've got knowledge -- information from this individual that he perpetrated two homicides in Putnam County and it was a woman in a western wear store and it was an elderly doctor." You drew the conclusions in Putnam County. They could not

FORM FL-9 REPORTERS PAPER & MFG CO 800-426-8515

verify it was Putnam County.

A No, they could not. They said it was an elderly woman and a doctor and we concluded that it was Putnam County because that's what we were presently investigating.

Q I wanted to clarify that because on direct I believe you indicated you were advised by the Charlotte County authorities that they were aware of two homicides in Putnam County, and that's not quite the truth.

A Well, it's how you say it. If you pointed out Palatka, that's Putnam County. I don't know whether he came right out and said, "I know for sure it was Putnam County," but he said it was in and around the Palatka area, which is the center part of Putnam County.

Q This whole arrest warrant is being challenged on the information that you had been provided with by the Charlotte County authorities tying Henderson into the two homicides that you had in Putnam County, so it's very important that we are able to precisely establish what information you received from Charlotte as opposed to information you had obtained in Putnam at this point. Do you understand what I'm saying?

A I really don't.

MR. McCABE: Excuse me. I object to that. That wasn't a question.

MR. SPRINGSTEAD: Well, I'm just trying to clarify

FORM FL-9 RECORDERS PAPER & MFG CO 800 826 6313

it for the witness, Your Honor, what I'm trying to do. Now, he seems to think there's no big deal involved in these semantics, and I think it's a real big deal is all.

MR. McCABE: I think it's getting argumentative.

MR. SPRINGSTEAD: It might be.

THE COURT: I would agree. You may continue your cross-examination but without extending this line of questioning.

MR. SPRINGSTEAD: Okay.

BY MR. SPRINGSTEAD:

Q Officer Bakker, you went back to Putnam County and at some point in time I assume you made the decision that a warrant would be obtained. Is that correct?

A Yes, sir.

Q Okay. And the application for the warrant is what you had previously identified as what has been attached to our defense motion. Is that correct?

A 751, correct.

Q And that's the form you used in Putnam County to obtain an arrest warrant based on probable cause. Is that correct?

A Yes, sir.

Q Now, aside from this particular affidavit, was there any other documentary statements or any other sworn affidavits prepared either by you and signed by you or someone else and

signed by you regarding other factual details involving this case as why you think Henderson perpetrated this particular homicide?

A None other than the other document attached to the 751, which was made out by the State Attorney's office.

Q But that's the arrest warrant itself.

A Right. That was all that beared my signature at that time.

Q Okay. Now, Officer Bakker, this affidavit is true and accurate to the best of your ability. Is that correct?

A Yes, sir.

Q Okay. And you applied for the warrant on the 9th day of February as stated by your affidavit and you received a warrant on the same day. Is that correct?

A Yes, sir.

Q Okay. Officer Bakker, can you offer the Court any explanation as to why with knowledge that Mr. Henderson is in court -- I mean was in the Charlotte County jail on the 9th day of February that you would have indicated in your affidavit, the sworn statement, that he perpetrated the homicide of Dr. Ferderber on the 9th day of February?

A We can back up, sir, but we can't go forward a minute.

Q Explain that.

A You know what I'm talking about. The law states tha

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we can back up from a date, but we can't go forward one minute, so we used the 9th as the basis for the affidavit although the homicide occurred before the 9th. We can back up, but we can't go forward one second, so we're saying that on or about the 9th or before that this homicide was committed.

Q That's not what the affidavit says, though. If I may read it, it says, "I, R. W. Bakker, Putnam County Sheriff's office," phone number, "do swear just and reasonable cause exists to believe that on the 9th day of February, 1982, the defendant ---" and it reads on.

A Based on the information that we developed from Citrus County (sic) and from our investigation on the 9th, we had probable cause to believe that a crime had been committed in Putnam County.

Q But you're stating that you have probable cause to believe he did the crime on the 9th day of February and you obtained your warrant on that representation from Judge Warren. Is that correct?

A Right.

Q Well, how could you swear -- we can back up --

MR. McCABE: Your Honor -- excuse me -- I believe he's explained it and I believe we're getting into an argument.

MR. SPRINGSTEAD: Well, I don't understand it, Your Honor, if he's explained it.

MR. McCALL: I think what the sergeant is trying to say is like when you charge somebody in information, you can prove it occurred any time before that date, but you can't prove it occurred after that date, and that's what Officer Bakker has explained.

THE COURT: That's the Court's understanding of this explanation.

MR. SPRINGSTEAD: Then the motion is sustained, Your Honor?

THE COURT: Yes.

BY MR. SPRINGSTEAD:

Q Okay. Officer Bakker, when you went to Charlotte County after obtaining the warrant, you went there on the 10th. Is that correct?

A Yes, sir. We left the 9th and arrived there on the 10th.

Q And I believe you indicated that when you arrived down there you were taken to a courtroom wherein a hearing was held. Right?

A Right.

Q And Mr. Henderson was present, along with his attorney. Is that correct?

A Right.

Q Okay. And the declaration of rights form that you earlier identified was, in fact, handed to you. Is that

correct?

A Handed to me.

Q Yes. You took physical custody of that document.

A Yes, sir.

Q And, again, so there can be no misunderstanding, I'll show you my copy. I assume that's the same one that the State Attorney showed you.

A Oh, yeah.

Q Okay. This is what's known as Exhibit A and attached to the motion, and that is a true and accurate representation of that declaration.

A Yes, sir.

Q Okay. Now, at the time you picked Mr. Henderson up, you received this declaration and you took your warrant over to the jail and took custody of him. Is that correct?

A That's right.

Q And he was in your exclusive care and custody. Is that correct?

A Yes, sir.

Q Okay. And the reason he was in your exclusive care and custody was pursuant to his arrest for the murder of Dr. Ferderber, --

A Yes, sir.

Q -- the warrant that we have just gone through.

A Yes, sir.

FORM FL-9 REPORTERS PAPER & MFG. CO 800-826-8519

Q And the warrant was obtained pursuant to your 751 form that was filed.

A Yes, sir.

Q Then I believe you testified either today or in earlier depositions that you traveled back to Putnam County for some three to five hours, approximately.

A I don't recall the exact time.

Q Okay. It was more than an hour or two, though.

A Definitely.

Q It's a long drive.

A Um-hum.

Q All right. During the course of that travel, you testified that you did not in any way violate the terms and conditions of the defendant's declaration. Is that correct?

A That's correct.

Q But at the same time you stated you complied with it, you indicated you engaged in conversation with the defendant.

A He started the conversation and we talked to him, whatever topic he wanted to talk about, but none of the times did we try to use this to get into what we wanted to talk about.

Q Well, Sergeant Bakker, how long have you been a police officer?

A Twenty years.

FORM FL-9 REPORTERS PAPER & MFG CO 800-626-8313

Q Well, if you've been a police officer for 20 years, then you would agree that obviously one way to induce an individual charged with an offense into making a statement is to become friends with that individual, would you not?

A Well, that's not necessarily so. You try to be friendly to anybody and talk.

Q But, Sergeant Bakker, the question is isn't it a technique that's used, based on your 20 years of experience, that if you become friendly with a person, he's liable to talk to you. Isn't that correct?

A Well, that's your opinion of technique that could be used. You want to talk to me, I'll talk to you outside. It doesn't matter. I'm not trying to use a technique on you.

Q What you and I talk about doesn't make any difference in the case. What I'm asking you, Sergeant Bakker -- do you understand the question?

A Yes, I do. I really do.

Q Would you please answer the question?

A I didn't engage him in conversation to get him to talk about this case because of this letter from Mr. Woodard.

Q Sergeant Bakker, you still haven't answered my question. The question was based on your 20 years experience, isn't it a known fact to you that one way in which to gain information and gain the confidence of a defendant that you desire to maybe get information from is to become friends with

him.

A Sir, if I answer that question and if I say, "Yes, that is a technique," you'll say that knowing that technique and based on that rational, I used that technique against him. Right?

MR. SPRINGSTEAD: Maybe I ought to be on the witness stand, Your Honor.

BY MR. SPRINGSTEAD:

Q Well, I want you to answer my questions first. I mean, if you say no, then I won't ask that question, but I tend to believe that you're going to have to say yes because you have been experienced for 20 years.

A Yeah, it is a technique, but I'm not saying that I used that technique on him.

Q Let me just ask that question. Officer Bakker, can you state for the record under oath that the thought never crossed your mind that if you became friends with Mr. Henderson you might get further information on that trip back?

A I'll follow that to the letter of the law. I did not try to broach anything. If he wanted to talk to me about the case, he could, but I would like for him to talk to me, which he eventually did, but I made no overtones to suggest that he should talk to me.

Q Other than just to engage him in friendly conversation --

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A Yeah.

Q -- with knowledge that that's one way to obtain the confidence of an individual and ultimately get some statements that you are looking for from him.

A About hunting in Wyoming? That's not even germane to this case and he was telling us -- I guess it was Wyoming or up in the mountains.

Q Officer Bakker, in fact, you exercised a technique that you had become well acquainted with over the 20 years of your experience, and that is if nothing else works, make friends with the individual and he may give you some information. Isn't that correct? Just answer the question.

A It is a technique, true, but I didn't necessarily use that on Mr. Henderson to obtain the information.

Q You can answer my question yes or no under oath. Just answer that question.

A Yes, it is a technique.

Q And you used it in this case.

A No, sir. I did not use it specifically for this case no, sir.

Q You used it in this case, though. That's my question.

A By talking to him?

MR. McCABE: Excuse me. He answered the question. He said he didn't use it.

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MR. SPRINGSTEAD: Your Honor, he hasn't answered my question. He has dodged the question because he knows what the answer is and he doesn't want to commit perjury in this courtroom.

MR. McCABE: He said no, Judge.

MR. SPRINGSTEAD: He did not say no.

MR. McCABE: Ask him again.

THE COURT: Is it your intention to answer the question in the negative?

THE WITNESS: Sir?

THE COURT: Is it your intention to answer the last question in the negative?

THE WITNESS: Yes, it is a technique, sir, but no, I did not set out intentionally to get him to talk to me because I knew that the Public Defender gave us the letter and I didn't want to violate any case or mess up any case of ours by trying to coerce him or play games with him because, obviously, he knew what he was doing and he was intelligent enough that I was afraid that he could turn it around on us later.

MR. SPRINGSTEAD: Your Honor, that is not responsive to the question. The question was with knowledge of -- he's admitted to the technique of engaging in friendly conversation. I asked him did he engage in that friendly conversation with the hope of possibly getting some

information, and I don't think he's answered that questio

THE WITNESS: I did not set out to do it, no, sir. I did not.

BY MR. SPRINGSTEAD:

Q But, in fact, that's what happened, isn't it?

A That's the end result, yes, sir.

Q Okay. Thank you.

MR. SPRINGSTEAD: If I may have a moment, Your Honor.

BY MR. SPRINGSTEAD:

Q Okay. Officer Bakker, you went on to testify on direct examination that a waiver was obtained, a written -- typed waiver that Mr. Henderson ultimately signed at approximately 1543 hours on the 10th of February. Now, I believe you indicated that there was another paragraph added in. Is that correct?

A Yes, sir.

Q Okay. And that was added in before you left to go get him in Charlotte County?

A Yes, sir.

Q Okay. Well, Officer Bakker, how can you explain the preparation of that form and the physical presence of that form before you went to get him in Charlotte County if it wasn't on your mind to try to get a statement from him?

A Well, if he decided at any time during the trip to

discuss it with us, I wanted him fully aware that even though he had been instructed not to that he had his right to do so.

Q So obtaining the statement from the defendant was on your mind before you left to go get him in Charlotte County. Is that correct?

A If he wanted to talk to us, yes.

Q It was on your mind to get a statement from the defendant prior to leaving for Charlotte County. Yes or no?

A Yes, if we could.

Q Now, Officer Bakker, you testified that prior to leaving Charlotte County with the defendant you had already received prior knowledge about these three hitchhikers who had been shot. Is that correct?

A Before leaving --

Q -- Charlotte County with the defendant.

A That he had testified that he had been involved, not necessarily in Charlotte or -- excuse me -- not in Henderson -- excuse me -- not Hernando or Citrus County, but that he had told the officers down there that he had killed three hitchhikers and somewhere in the north part of Florida. We didn't know exactly where, Panhandle, Hernando County, or where. We obtained a map in Crescent City with the route numbers, and I think, if I remember correctly, he said something about Route 44 and coming down 19, and by process of elimination, we started heading towards Citrus County.

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Q And Officer Hord also had that information.

A Yes, sir.

Q Regarding Officer Hord -- just to make sure that I understand everything -- the actual statement from Mr. Henderson that he wanted to give some information was obtained by Officer Hord outside of your presence. Is that correct?

A Yes, sir.

MR. SPRINGSTEAD: If I may have just a moment, Your Honor.

BY MR. SPRINGSTEAD:

Q Okay. Officer Bakker, you testified here in a deposition, if I recall, or during the course of that deposition I believe the question was asked, "What do you think Mr. Henderson's motivations were for wanting to disclose the whereabouts of these bodies?" I believe your statement to me was, "He wanted them properly buried."

A Or buried. The end result was properly buried.

Q I'm not using the deposition yet, but I think you can recall the conversation. How did you get into that particular conversation with the defendant as to why he wanted to disclose this information?

A I don't recall that part other than when Chris Hord brought him in and said that -- I was on the phone and he wanted to discuss the matter of our homicide, as well as assist us in the recovery of the bodies.

Q Was the terr "Christian burial" ever used?

A Christian burial?

Q Christian burial, yes.

A I don't recall if it was or not.

Q Okay. Officer Bakker, how often do you get involved in transportation of defendants?

A If it's my case and it's a serious case, I usually do it, and if it's within driving range.

Q Now, on this particular case, Robert Dale Henderson, I believe you indicated, was taken by a convenience store and cigarettes and a cold drink were purchased.

A Well, this was later on. This was --

Q After you left Charlotte County, somewhere up the road, I believe you indicated you stopped and bought cigarettes and cold drinks or something.

A We stopped several times, one of which when we fed him in St. Petersburg. And we stopped another time near Orlando and I believe I got cigarettes. I don't know.

Q Who paid for those?

A I paid for them.

Q Is that a normal practice with you at any time you transport defendants?

A Sure.

Q You pay for it out of your own pocket?

A Sure.

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Q Do you get reimbursed by the sheriff's department?

A If it's nickels and dimes, I never worry about it.

Q Okay. I believe you further testified that Mr. Henderson was taken -- after he gave and signed a waiver at the Crescent City Police Department, he was taken to a place and hamburgers were purchased.

A Yes, sir.

Q And shoes were purchased?

A No, sir. Shoes were obtained from the jail.

Q Okay. Shoes were picked up at the jail.

A Yes, sir. Cigarettes were obtained, coffee, and hamburgers.

Q In other words, you were willing to make him as comfortable as need be to get this information. Is that correct?

A From the beginning -- from the time we left Crescent City, he said that his feet was hurting him, at which time we told the captain that we would need another pair of shoes and gave his size -- I believe he had flip flops on from Charlotte County -- and that what kind of cigarettes he smoked, and we told him we would obtain those, also.

Q Officer Nord (sic), at any time did you --

MR. McCABE: Bakker.

MR. SPRINGSTEAD: Bakker. Excuse me. I've got Officer Nord on my mind.

BY MR. SPRINGSTEAD:

Q Officer Bakker, at any time did you attempt to contact an attorney on behalf of Robert Dale Henderson and have him advised of his rights by an attorney prior to obtaining the waiver from him and obtaining the statement from him?

A Did I contact a lawyer?

Q Yes.

A No, sir. I told him that he had that right. If he wanted to talk to a lawyer, he had that right. I went into great details on his rights in Crescent City, not just the formality of reading it through, sir. I went in great detail so he fully understood his rights.

Q But no attorney was obtained and he was never taken before an attorney. Is that correct?

A Correct. Well, eventually when he came back to Putnam County after the discovery of the three deceased over here.

Q Officer Bakker, when you left to go look for the bodies, it was a continuous thing. Is that correct? From the time you got the admissions from him, you got Lieutenant Usina and you continued to move. Is that correct?

A Right.

Q And it was a continuous process. From the time he made these admissions, you were with him from that time until

you found and located the bodies.

A Yes, sir.

Q Okay. Citrus County authorities, as it turned out, were not even involved. Is that correct?

A Other than we met them in Crystal River trying to locate the area.

Q Right, but, in fact, you just traveled through their county and nothing of importance was determined.

A We stopped at a gas station because Robert had to go to the bathroom. We got him a Coke.

Q Okay. The Hernando County authorities had no prior knowledge that these homicides may have occurred in Hernando County, did they?

A No.

Q The first they heard this was when y'all called them out to the scene.

A Right.

Q And at that time --

A Well, Citrus County called them out. We contacted Citrus County, also, because they had no idea we were on our way over here either. We were just trying to follow the directions of Mr. Henderson as to the route trying to figure out what county it occurred in.

Q But Hernando County was summoned to the scene while you were there. Is that correct?

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A By Citrus County.

Q And they showed up. Is that correct?

A Yes, sir.

Q And the bodies were given to them at that time.

A Well, we turned it over to the Citrus boys and we backed out.

MR. SPRINGSTEAD: Okay. If I may have a moment, Your Honor.

BY MR. SPRINGSTEAD:

Q Officer Bakker, was Robert Dale Henderson ever taken into the jail?

A Our jail?

Q The Putnam County jail. That's correct.

A Yes, sir.

Q That night?

A Well, whatever time we got back.

Q Back from Hernando County.

A Yes, sir.

Q Okay. But prior to leaving on this quest to find these three alleged victims, he was not taken into the Putnam County jail. Is that correct?

A No, sir.

Q Officer Bakker, in fact, wasn't there a statement made either by you or in your presence that you did not want the defendant to go back to the jail because he might come in

contact with an attorney?

A No. Not in my presence, it wasn't.

Q You didn't make that statement?

A No, sir.

Q And it was not made in your presence?

A If he'd requested an attorney, sir, we would have stopped right then and there.

Q That's not exactly what I asked. I asked if either you or someone in your presence made the statement that, "We don't want to take Mr. Henderson by the jail because he may come in contact with an attorney."

A No.

Q That was never said?

A I don't recall that at all, sir.

Q Okay. Officer Bakker, do you know or have knowledge based on your 20 years of experience in the criminal field, if there is a technique for obtaining admissions regarding homicides involving the aspect of decent Christian burial for the victims?

A I can't say there's a technique or there's not a technique. I didn't attend a large academy to learn technique: I started my police work in Belle Glade, which is quite out of the way. I learned from the world of hard knocks.

Q Well, based on your experience in the world of hard knocks, would you say that that is a technique that is used to

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gather information from an alleged suspect of a crime?

A Never had to use it. Never even heard of it. Never worked a homicide where the bodies were not found and to try to broach this thing.

Q So you're saying you've never even heard of that particular --

A I might have. I don't recall it. I mean I've just never been involved in an investigation where we had a body and we didn't know where it was at.

MR. SPRINGSTEAD: Just a moment, Your Honor.

I have no further questions at this time of this witness.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. McCABE:

Q Investigator Bakker, do you recall the series of questions Mr. Springstead asked you regarding who concluded that the homicide occurred in Putnam County, whether it was the Charlotte County people or the Putnam County people? Do you remember that series of questions?

A Yes, sir.

Q Did Putnam County call Charlotte County looking to find out if they had a murderer down there or did Charlotte County call Putnam County?

A Charlotte called Putnam.

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Q Now, on the ride back from Charlotte County -- first of all, before you got your warrant but after Mr. Henderson was in custody in Charlotte County, you went down to Charlotte County. Correct?

A On the 6th.

Q Now, the things that Captain Miller had told you, did you confirm them by your conversations with Detective Lucas?

A Yes, sir.

Q So you had a face to face conversation with Detective Lucas.

A Yes, with Investigator Lucas.

Q All right. And that was before you got the warrant.

A Oh, yes.

Q Now, on the way back you talked about -- you said that the conversation ensued about hunting in Montana or Wyoming or something like that. Who was initiating this conversation?

A Mr. Henderson talked about the hunting.

Q How about the other subjects that came up?

A It was just generalities, just everything. Whatever came up, we talked about with the exception of trying to coerce him into saying something about this case.

Q Was Mr. Henderson talkative?

A Oh, yes.

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Q Did he ever say, "I don't want to talk to you at all about anything at all"?

A No, sir.

Q Who initiated the conversations?

A Mostly him. Well, he told us about the hunting down there near Punta Gorda or wherever he turned himself in at, telling us what he could shoot. I told him that I wasn't much of a hunter. I don't believe in killing the animals. He'd say he'd go up in the mountains and stay for a long period of time by himself, that he loved the isolation and loved the wilderness.

Q And you talked to him?

A Yes.

Q You weren't rude?

A Of course not.

Q Now, did you in any way suggest to him that it would be to his benefit to talk with you about your cases?

A I never even talked about my cases, period.

Q Did you ever bring up the subject of your cases --

A No, sir.

Q -- the whole ride back until you got to --

A No, sir, not until he came back with Chris Hord.

Q Did you bring up the subject of these cases subsequently determined to be in Hernando County? Did you bring those up at all, --

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A No, sir.

Q -- indirectly, directly, anything?

A No.

Q Did he ever indicate to you on the way back that he wanted to talk to a lawyer?

A No, sir.

Q Did he talk about lawyers at all?

A I don't recall him talking about lawyers because it's my policy if he mentioned a lawyer, I stop.

Q He never said anything about a lawyer?

A No, sir.

MR. McCABE: That's all I have.

THE COURT: Recross?

MR. SPRINGSTEAD: Yes, Your Honor.

RECROSS-EXAMINATION

BY MR. SPRINGSTEAD:

Q Officer Bakker, you said that, you know, any mention that had been made of a lawyer you would have stopped right there. Is that correct?

A Correct.

Q Well, you know, you were served with this document that states basically, "I don't want to talk to any police officers, engage in any conversations whatsoever without my lawyer being present." Now, that was before you even left Charlotte County.

A Well, we didn't -- what topic we discussed was what he broached first, and we did not try to get anywhere near any of the topics regarding this matter because it also states in there of any criminal matter.

Q But you admit engaging in casual conversation and basically asking him questions about those topics, don't you?

A I guess I might have about the topics that concerned him, but nothing on a criminal matter. You know, if he said, "Well, I can shoot a cow or a turkey at a hundred yards," I'll say, "Wow! That's pretty good shooting," something like that because I don't like to hunt. I think I might have told him that my experience with hunting is nil because I don't hunt.

MR. SPRINGSTEAD: No further questions, Your Honor.

THE COURT: Any additional questions?

MR. McCABE: Just a moment, please, Judge.

No questions.

THE COURT: All right. Call your next witness. We'll continue with the Putnam County deputies so that they can leave.

MR. McCABE: Yes, sir. I only intend to call one more.

Detective Nord.

THE COURT: All right. Let's take a five minute break.

(Court recessed at 12:05 p.m.)

(Court reconvened at 12:12 p.m.)

MR. McCABE: Call Officer Hord, Your Honor.

THEREUPON,

WILLIAM CHRIS HORD,

a witness called on behalf of the State of Florida, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McCABE:

Q State your name, please, sir.

A William Chris Hord.

Q Your occupation?

A I'm a detective with the Putnam County Sheriff's office.

Q All right. Detective Hord, were you involved back in February of this year with Detective Bakker in retrieving one Robert Dale Henderson from the Charlotte County authorities

A Yes, sir, I was.

Q And did you accompany Detective Bakker and Henderson on the ride back from Charlotte County to Putnam County?

A Yes, sir, I did.

Q I want to direct your attention to a portion of that ride occurring, I believe, near Crescent City when Bakker got out to call somebody.

A Yes, sir.

Q All right. Who was he going to call and why?

A The chief of detectives of the sheriff's department in Putnam County, Captain Cliff Miller. We were instructed by Captain Miller when we got back in Putnam County to give him a call and appraise him of the situation as far as what was going on at the sheriff's office.

Q Okay. Now, during the trip from Punta Gorda or Charlotte County to Crescent City, had there been any conversations with Mr. Henderson?

A Certainly.

Q And what type of conversations? How would you characterize those conversations?

A Just strictly that, just -- you don't ride mute for however many miles that was. We just talked.

Q Were there any conversations between Charlotte County and Putnam County relating to any alleged crimes that Mr. Henderson might have committed?

A No, sir.

Q All right. Did that subsequently change?

A After we got to Putnam County, yes, sir.

Q All right. Tell the Court, if you would, Detective, what occurred in Putnam County that changed the course of the conversation.

A We pulled into the back of the Crescent City Police Department -- there's a parking lot and entrance to the police department -- in order to let Sergeant Bakker go inside

and make his phone call. Myself and Mr. Henderson stayed in the patrol car. Mr. Henderson acted like he was interested in what we were doing. I explained to him that we were in Putnam County, that Sergeant Bakker was calling the chief of detectives just to tell him that we were here. He wanted to know what we would do then.

Q Who wanted to know?

A Mr. Henderson.

Q All right.

A He was -- I told him it was up to the captain, but more than likely we'd be heading to the Putnam County Sheriff's Department to the detention facility. He kind of looked at me like it was just, "Is that all," and I asked him what it was he was trying to tell me. He indicated that he wanted -- he thought he wanted to assist me in finding some bodies. I told him that he was not in a position to think he wanted to do something, that he had to make up his mind, and he said that he did want to help me in my investigations.

Q All right. Now, had the subject of missing bodies come up prior to that time?

A It's my understanding they had, yes, sir.

Q Where?

A In Charlotte County. Mr. Henderson had made some statements to some people down there in reference to there were some bodies somewhere that had not been located.

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Q Now, had that information been passed on to y'all?

A We had heard that information, but we had no personal knowledge of it.

Q During the course of the trip from Charlotte County to the Crescent City Police Department, had there been any conversation regarding missing bodies or finding bodies or burials or anything like that?

A Not that I recall.

Q And what prompted you, again, if you would, Detective Hord, to ask him the question, "What are you trying to tell me?"

A Just his reaction to the fact that we were there and there wasn't anything else going on except he was going to jail.

Q And what was that reaction, again?

A It was just kind of a, you know, "Isn't there something else?" You know, "There's more to this than what y'all know."

Q Did he say anything?

A It was more just -- at that point in time, no.

Q All right. Then what was it? What did he do?

A Well, it was just kind of a look on his face like, "You've got to be kidding," you know. "Here I am. I know all these things, and all you're going to do is take me to jail." It's hard to describe an expression.

Q All right, sir. And the first statement out of his mouth that was related to criminal matters was "I think I want to help you find some bodies."

A Yes, sir.

Q And what occurred after that?

A I took Mr. Henderson inside the police department at Crescent City. I got Sergeant Bakker's attention and informed him that Mr. Henderson was wanting to talk to us and that he had also indicated that he needed to go to the rest room. Sergeant Bakker went back and used the phone while I took Mr. Henderson to the rest room. Then we went in and pulled out a rights form that we had prepared in the event that Mr. Henderson did want to talk to us, and Sergeant Bakker read it to him and gave it to him to review before he signed it. Then it was signed in front of myself, Sergeant Bakker, patrolman in Crescent City, Joe Anderson, and Rosalyn Cook, who is a secretary there and a notary public.

Q At any time during the trip from Charlotte County to Crescent City, had you tried to induce Mr. Henderson into talking about these bodies or about your cases in Putnam County?

A No, sir.

MR. McCABE: I believe that's all I have, Your Honor.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. SPRINGSTEAD:

Q Officer Nord, it's my understanding that your involvement with the Henderson case actually began at or about the time y'all were scheduled to go down and pick him up. Is that correct?

A No, sir, it was not.

Q Okay. Were you assisting Officer Bakker in investigating the two homicides?

A The single homicide of Dr. Murray Ferderber.

Q Okay. And that's how you got involved in the case. Is that correct?

A Yes, sir.

Q And that's why you went to Charlotte County on that day?

A We went to Charlotte County that day, and my part was to act as a second officer and a driver.

Q During the course of preparing to go to Charlotte County, I believe you indicated that you had prepared or had caused to be prepared a waiver just in case Mr. Henderson wanted to give you some information.

A I knew of a waiver that had been prepared. I did not prepare it.

Q Well, I say you either prepared it or caused it to b

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prepared.

A I didn't have anything to do with that.

Q All right. You knew it existed before you left. Is that right?

A Yes, sir.

Q Okay. It existed for the purpose of using it in case he wanted to make a statement to you. Is that correct?

A That's correct.

Q Okay. And that was on your mind before you left to go to Charlotte County. Is that correct?

A Yes, sir.

Q How long did it take you to get to Charlotte County?

A Sir, we left on the 9th in the afternoon, and about halfway down we spent the night. And then the next morning we got up and went on down to Charlotte County.

Q During the course of that travel, you and Officer Bakker had one or more conversations regarding how you were going to handle Mr. Henderson, didn't you?

A Yes, sir.

Q You had one or more conversations regarding any type of interrogation procedures that might be used, too, didn't you?

A No, sir.

Q You never discussed possibly the event if he decided to make a statement or what would happen if informat:

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came to light?

A In that event, then Sergeant Bakker was the officer that would have any dealings with Mr. Henderson.

Q But you do admit that there was a discussion between you and Sergeant Bakker regarding how you were going to handle Mr. Henderson the next day when you picked him up.

A Certainly.

Q These discussions involve any type of plan between you and he to avoid talking about the case and yet establish a friendly rapport with Mr. Henderson?

A We were strictly going to transport him to Putnam County.

Q And it never crossed your mind that you may have an opportunity to establish a friendly rapport with him?

A Possibly.

Q Possibly. What does that mean?

A Sir, I can't really say what crossed my mind this long ago.

Q Well, Officer Eord, --

A I can say we planned the trip.

Q Officer Hord, how long have you been in police work?

A I've been with the sheriff's department in Palatka about seven years.

Q Approximately, to the best of your knowledge, how

many cases have you worked on where a confession was subsequently obtained from a defendant?

A Two dozen.

Q Okay. Have you ever found during the course of your police work that in certain cases you can get information from an individual if you act friendly and cordial toward that person and engender a sense of confidence and friendliness about the two people involved?

A Certainly.

Q And, in fact, in this particular case, that type of conversation and friendly atmosphere prevailed in that sheriff's car going from Charlotte County back to Putnam County, didn't it?

A Yes, sir, it did.

Q And you knew during the course of the conversations and the friendly rapport that it was possible that this man may begin to cooperate with you and Officer Bakker and give you information pertinent to his cases. Isn't that true?

A There was that possibility, yes, sir.

Q Now, when you got to Charlotte County you received, I believe, from the time you picked up Mr. Henderson -- you did not receive it personally, but you were made aware of and you saw a declaration executed by the defendant wherein he indicated he didn't want to talk to any police officers. Is that correct?

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A Yes, sir. I received a copy of it.

Q And I believe you testified at deposition that you complied with that to the letter.

A Yes, sir.

Q But yet you admit here today in court that you engaged in conversations from the time you left Charlotte until you got to Putnam County with the defendant.

A Certainly.

Q And that conversation was of a friendly, cordial nature not related to the offense, just friendly, cordial, whatever you wanted to talk about you talked about.

A Yes, sir.

Q Now, Officer Bord, it's my understanding that when you got to Crescent City Officer Bakker left the vehicle and went inside and made a phone call. I believe he went in a convenience store or something and made a phone call or the police department and made a phone call to the Putnam County Sheriff's office.

A Yes, sir.

Q Now, prior to arriving at that destination at that location, you had already engaged in conversations with the defendant regarding three hitchhikers and their deaths. Is that correct?

A No, sir.

Q Well, at any time prior to arriving at the Crescen

City Police Department, did the conversation between yourself and Mr. Henderson ever lead you to believe that he wanted to tell you something?

A Several times.

Q This is during the course of the trip. Is that correct?

A Yes, sir.

Q Okay. But yet he did not give you any factual, hard information at that time, did he?

A No, sir.

Q So at the time you were parked outside of the Crescent City Police Department, you had not obtained any hard, factual evidence that would link him to this case. Is that correct?

A Personally, no.

Q Okay. Then I believe you indicated that you could just tell by the expression on his face that he wanted to tell you something. Is that correct?

A I could tell that he had something on his mind. I could not tell if he wanted to tell me anything or what. That's why I asked him.

Q You were reading that by his facial expressions and his physical gestures. Is that correct?

A Yes, sir.

Q Okay. And then, Officer Hord, at that point in time

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you turned to Mr. Henderson and said, quote, "What is it you're trying to tell me?" Is that correct?

A That's correct.

Q Okay. And pursuant to that question, Mr. Henderson was ultimately presented with the waiver that you prepared before you left Putnam County, which he signed, and then proceeded to give you a complete account of what happened regarding those hitchhikers and, in fact, took you to where the bodies were located. Is that correct?

A Yes, sir.

MR. SPRINGSTEAD: One moment, Your Honor.

I don't have any further questions, Your Honor.

MR. McCABE: Brief, if you please, Your Honor.

REDIRECT EXAMINATION

BY MR. McCABE:

Q You indicated, Detective Hord, that several times during the trip you were under the impression that Henderson wanted to tell you something. Correct?

A That's correct.

Q What led you to those impressions? What did he say that led you to think that?

A It was just -- he was aware, I'm sure, of what had gone on in Charlotte County.

MR. SPRINGSTEAD: I'm going to object to that, Your Honor.

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BY MR. McCABE:

Q It's your understanding that what had gone on in Charlotte County occurred between himself and other people by him talking to detectives?

A Yes, sir.

Q Well, what was it on the trip that led you to the impression that he wanted to talk or say something?

A Well, there was just the comments about hitchhikers on the side of the road. He would point them out. He would bring up the fact that there was a woman hitchhiking on the side of the road, "Hey! Look at that!"

Q Did he ever talk about how dangerous hitchhiking was

A We didn't get into it, no, sir.

Q All right. Go ahead.

A He was big on firearms. He got to talking about guns, .22 caliber pistols and rifles. He talked about how as a child he was sent out hunting and he was given a couple of bullets by his father and he was expected to bring home two pieces of meat, that he wouldn't miss and that he had a high proficiency with his firearm. He talked about that prior to giving himself up to the authorities in Charlotte County that he had spent a number of days in the woods hunting and living off the land. He had used a pistol, a .22 caliber pistol, to shoot a small pig of about 30 pounds while it was running from him. He shot a turkey. He lived with fishing

with a hand line. He was just very -- it was to the point of bragging about how good he was with guns. He was -- like I say, the hitchhikers, knowing we were looking for hitchhikers, not personally in our investigation, but there was rumors that there were people out that had been hitchhiking that were not found.

Q But that had not been discussed with Mr. Henderson by you, though.

A No, sir.

MR. McCABE: That's all I have, Judge.

MR. SPRINGSTEAD: Just two questions, if I may, Your Honor.

RECROSS-EXAMINATION

BY MR. SPRINGSTEAD:

Q Officer Hord, how long did it take you to travel from Charlotte County to Putnam County, approximately?

A Four and a half - five hours.

Q And during that course of time, Mr. Henderson was in your and Officer Bakker's exclusive care, custody, and control. Is that correct?

A Certainly.

Q And he was in your care, custody, and control simply because or pursuant to the authority of Judge Warren's arrest warrant issued on the day before. Is that correct?

A That's correct.

MR. SPRINGSTEAD: No further questions.

THE COURT: Officer, would it be fair to say or assume that the manner in which you and your fellow officer conducted yourself on the return back to Putnam County was the same as you would have done in any other case of returning a suspect from some other jurisdiction to your jurisdiction?

THE WITNESS: Yes, sir.

THE COURT: There was nothing unusual or peculiar in the manner that y'all conducted yourself with this defendant?

THE WITNESS: No, sir.

THE COURT: All right.

MR. McCABE: Thank you, Judge.

I have no further questions.

MR. SPRINGSTEAD: One minute, Your Honor. I'm thinking about the questions the Court asked to see if there's something I might want to ask in response.

BY MR. SPRINGSTEAD:

Q Officer Hord, in response to the Judge's questions, I would like to follow up, if I may.

How many times have you been involved in the transportation of individuals accused of homicide in Putnam County?

A None.

A None.

Q So when you answered the Judge's question about, you know, you didn't do anything any different in this particular case in regard to any other case you had been involved in like that, you really kind of gave a misleading answer, didn't you, because you had not been involved in any other case like this.

MR. McCABE: Objection, Your Honor.

MR. SPRINGSTEAD: Well, wait a minute, Your Honor. I think that's a fair question.

MR. McCABE: I think that I can object to any question, Mr. Springstead.

MR. SPRINGSTEAD: Okay.

MR. McCABE: The Judge didn't say a case like that. He said any other cases.

THE COURT: Go ahead with the question.

BY MR. SPRINGSTEAD:

Q Okay. But there have been no other cases like this, is that correct. any homicide cases where you had to go transport?

A I have transported prisoners.

Q How many times have you been involved in the transportation of a prisoner, though, while acting in the capacity of a detective on the case?

A As a detective on the case?

Q That's correct.

A Twice.

Q Twice. This case and one other case?

A I just know I've gone to Alachua County for one and picked him up and brought him back. I can't recall his name.

Q On that particular case when you went to Alachua County, did you have a pre-prepared waiver on your person when you went to pick him up in Alachua County?

A No, sir, I did not.

Q So when you told the Judge that you did this case like you've done all the other cases, that wasn't true, was it?

A Yes, it was.

Q Well, then, how do you reconcile that statement with what you just said, that you didn't have a pre-prepared waiver?

A Because you didn't ask me about specifics since I've been a detective. I've been an investigator with the sheriff's department for a total of two months. I have been with the sheriff's department here for seven years. I have been with the detention facility for four years prior to that. I have been transporting prisoners for a period of 11 years.

Q But the point is -- and, you know, I'm not trying to put you on the spot. I apologize if I've been, you know, aggressive on that point but, reasonably stated, on the other cases that you were involved as a detective on the case

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and you went to transport the individual suspect from Alachua County to Putnam County, you did not take with you a waiver for him just in case he wanted to make a statement to you in transit, did you?

A No, sir.

Q Okay. So, therefore, you can correct your response to the Judge by indicating that you didn't do this one exactly like all the rest, did you?

A I had nothing to do with this waiver form, sir. I did not make it out. I did not review it. I knew it was present and it was at the instructions of the chief of detectives that it be made out and carried with us.

Q But you will concede, sir, that that waiver was a part of this transfer that you were involved with.

A It was part of my instructions for this transfer, yes, sir.

Q Officer Hord, did you ever transfer prisoners in any other capacity other than being a detective?

A Yes, sir.

Q Okay. How many times did you carry waivers with you on those instances?

A None.

MR. SPRINGSTEAD: No further questions, Your Honor.

MR. McCABE: Your Honor, just so I can make sure that this horse is dead, I'm going to beat it some more.

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REDIRECT EXAMINATION

BY MR. McCABE:

Q Detective, are you generally a friendly person?

A I try to be.

Q Is Sergeant Bakker generally a friendly person?

A Yes, sir, he is.

Q On the way back from Charlotte County, were you anything other than yourself in talking with Mr. Henderson?

A No, sir.

Q Were you deliberately friendly?

A No, sir.

Q Were you rude? Anyone tell you to be mean and nasty and be rude?

A No, sir.

Q Now, on these other cases where you transported prisoners since you've become a deputy sheriff, you always carry your rights card with you?

A Yes, sir, I do.

Q If someone wants to talk to you, can you read them their rights off of the rights card?

A Yes, sir, I do.

Q Have pretty much the same rights as this written waiver does?

A Yes, sir.

MR. McCABE: That's all I have.

MR. SPRINGSTEAD: Just one moment, Your Honor.

RECROSS-EXAMINATION

BY MR. SPRINGSTEAD:

Q Officer Bord, you indicated you spent the night on the road between Putnam County and Charlotte County. Is that correct?

A Yes.

Q Where did you spend the night?

A At Detective Sergeant Bakker's mother's home in St. Petersburg.

Q Did you request any per diem that night from the sheriff's department?

A No, sir.

MR. SPRINGSTEAD: No further questions.

MR. McCABE: No further questions, Judge.

THE COURT: All right. Is there any need to call any of the other Putnam County officers?

MR. McCABE: No, sir. Lieutenant Usina is here, but I don't think we need to call him.

THE COURT: Are any of them going to be called by the defense?

MR. SPRINGSTEAD: No, Your Honor. I think that the evidence on some of these issues, they presented it.

THE COURT: All right. Y'all are all released from process, and you can go back before Judge Eastmoore gets

YOUR RIGHT

Pla Carlock City P.D

Date 1 Feb 82

Time 1543 hrs.

Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advise before we ask you any questions, and to have him with you during questioning. You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court. If you wish to answer questions now without a lawyer present, you have the right to stop answering questions at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER

I have read the staement of my rights shown above. I understand what my rights are. Iam willing to answer questions and make a statement. I do not want a lawyer. I understand and know what I am doing. No promises or threats have been made to me and no pressure of any kind has been used against me.

I am aware that my attorney, in Charlotte County Florida, has instructed me not to speak with Law Enforcement Officers. I am also aware of my Constitutional Rights to disregard the instructions of my attorney and to speak with the Officers from Putnam County, Florida. I wish to exercise my rights and to speak with these officers.

Signed Robert D. Henderson

Witness _____

Witness _____

Time 1543 hrs

R. L. Bobbe.

Joe Anderson

Rosalind Gayle Clark

NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires June 20, 1985

EXHIBIT "B"

Enforcement ____ Of County

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Hernando County cases at the time of the appointment. While the Public Defender might have been de facto representing the Defendant, I don't think they de jure represented him. I don't know if that makes a difference in any event since it's conceded Detective Perez knew -- I don't think anybody hardly knew -- that the Public Defender had been appointed. They certainly took no action. But I don't think that alters the Court's ruling on the Motion.

MR. SPRINGSTEAD: I assume the Court did take judicial notice of those matters I asked you to take judicial notice of.

THE COURT: Correct. Motion denied.

MR. SPRINGSTEAD: Your Honor, at this time we would like to present factual evidence on the Motion to Quash the Venire filed in this cause by counsel for the defense on November 15, 1982. In support thereof, we would call Assistant Deputy Clerk, Mrs. Debbie Manus. Is that correct?

MS. MANUS: Yes.

MR. SPRINGSTEAD: Ask she be sworn at this time.

MR. McCABE: I'm going to -- Mr. Springstead indicated -- based on what happened in Hernando County, I would object to matters of time -- reading of the names of the jurors who were excused by the Clerk. I

would stipulate to whatever numbers th[illegible] they come up with, gross numbers. I think that's the issue, not the names.

MR. SPRINGSTEAD: I think possibly for expediency purposes we could have the witness go through her master copy of the venire, indicate to the Court every set of circumstances wherein a person was excused by the Clerk's office and explain those circumstances, and then simply attach a copy of the master venire which shows all of those individuals excused by the Clerk's office.

THE COURT: Does the venire have the circumstances on it?

MR. SPRINGSTEAD: Yes, sir. It's kind of abbreviations. The record would not be clear without an explanation by the Deputy Clerk.

MR. McCABE: We wouldn't want that; would we?

MR. SPRINGSTEAD: Not at all.

THE COURT: All right. Go ahead.

THEREUPON,

DEBBIE MANUS,

a witness herein, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SPRINGSTEAD:

Q State your name.

A Debbie Manus.

Q And your occupation.

A Deputy Clerk.

Q And where do you work, Mrs. Manus?

A Lake County Circuit Court Felony Division.

Q What responsibilities do you have regarding that employment?

A As far as the jury goes?

Q Yes.

A Okay. I greet the jury. I take some of the excuses, and we also have another jury clerk who works in the law library who does this, also.

Q Do you work under the same guidelines and parameters?

A Yes.

Q That would be the Order that has been entered by the Chief Judge; is that correct?

A Yes.

Q Okay. That Order authorizes you to excuse prospective jurors on certain grounds; is that correct?

A Yes.

Q And you follow that Order; is that correct?

A Yes.

Q Okay. You've got before you, I believe, the master copy of the venire that was pulled for this particular case; is that correct?

A Yes.

Q Okay. I'd like for you to start off with Page 1 and just indicate, if you would, how many people were excused prior to this morning by you or the other Deputy Clerk who has that same responsibility?

A Two of them, Number 7 and Number 8.

Q And the reason?

A Number 7 was non-service, didn't receive it in the mail or it came back to us. Number 8, eighty-four years old.

MR. McCABE: For the purpose of clarification, the witness should be instructed that non-service is not an excuse, and those jurors should not be counted in the gross figures.

THE COURT: I think that would be the best.

BY MR. SPRINGSTEAD:

Q Your master venire any name that has N.S. beside

it would be specifically non-service; is that correct?

A Correct.

Q Let's eliminate those from running down the list. Turn to Page 2.

A Okay. Number 19 is a dentist.

Q And he was excused by you?

A Yes.

Q Everybody you're going to name has been excused by you --

A Or by the other girl.

Q Okay.

A Number 31, seventy-five years old. Thirty-three, deceased. Number 34 was reset to December 6.

Q Would you explain what "reset" means?

A A reset is when we have prospective juror called in and they can't make it for this particular date, we can reset them for another day.

Q That reason would be just inconvenience or things of that nature?

A Hardship or they are going to be out of town.

Q Okay. So inconvenience, out of town, family hardship.

A I don't have the particular reasons why because the other girl did this.

Q Okay. That's what reset would mean; is that

correct?

A Right.

Q Okay.

A Number 36, seventy-eight years old. Okay. I forgot one, same page, Number 26, I excused her this morning. She came. She's an expectant mother. She looked about six-months pregnant. Number 44 has a doctor's excuse, quadriplegic. Forty-three, reset to February 22, 1983.

Q That would be the same reason earlier described about reset?

A Yes. Number 46, seventy-six years old. Number 50, seventy-six years old. Fifty-six, seventy-one years old. Fifty-eight, reset, January 10, 1983. Sixty, seventy-eight years old. Number 7[illegible], they have moved to out of county. Seventy-one, doctor's excuse, back problems. Seventy-three, eighty years old. Seventy-five, seventy-seven years old. Seventy-eight, eighty years old. Eighty, deceased. Eighty-one, seventy years old. Eighty-six, seventy years old. Eighty-seven, seventy-four years old. Eighty-nine, deceased. Ninety-one, back problem, doctor's excuse. Ninety-nine, seventy-seven years old. One hundred, excused per Judge Aulls.

Q Do you know why that particular individual --

A Pam Woodworth was her name, the other jury Clerk.

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Q One sixteen?

A One sixteen, deceased. One twenty-five, moved out of county. One twenty-seven, reset, March 7, 1983. One twenty-eight, seventy-one years old. One thirty-one, eighty-six years old. One thirty-four, child under ten. One forty-two, seventy-two years old. One forty-three was excused by Judge -- Judge Huffstetler. One forty-six, doctor's excuse, medical. One forty-seven, reset to February 7, 1983. One forty-nine, seventy-one years old. One fifty, doctor's excuse. One fifty-three, eighty years old. One fifty-five, eighty-six years old. I'm sorry, that was -- one fifty-five was eighty-six years old. One fifty-six, medical, doctor's excuse. One sixty-five, moved to Duval County. One sixty-eight, eighty-one years old. One seventy-three, deceased. One seventy-four, small child. One seventy-five, excused per Judge Huffstetler. One seventy-six, doctor's excuse for medical reasons. One seventy-seven, excused per Judge Huffstetler. One seventy-eight, child under four. One seventy-nine, reset to January 10, 1983. One eighty-one, seventy-six years old. One eighty-two, excused per Judge Huffstetler. One eighty-four, husband in the military and is living in New York now.

Q Excuse me?

A Husband is in military and is living in New York with her husband.

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One eighty-five, seventy-four years old. One eighty-seven, seventy-two years old. One eighty-eight, small children under twelve. One ninety, medical, doctor's excuse. One ninety-two, reset, March 7, 1983. Two hundred, physician at Lake County Jail. Two 0 six, small child under ten. Two 0 seven and two 0 eight, both reset for March 14, 1983. Two 0 nine, seventy-three years old. Two eleven, reset to December 6th. Two one three, reset to January 10, 1983. Two fifteen, doctor's excuse, medical. Two seventeen, seventy-five years old. Two twenty-five, a hundred percent disabled veteran. Two twenty-nine, seventy-three years old. Two thirty-one, reset, December 6, 1982. Two thirty-seven, reset December 6. Two thirty-eight, excused per Judge Aulls. Two thirty-nine, deceased. Two forty, reset to December 6. Two forty-four, reset to December 13. And I excused one forty-six. The woman called yesterday and said she had polio, she had no way of getting here because of that. She couldn't get a doctor's excuse here on time. She would send one in.

Q These people call in on these matters, and they advise you over the telephone their reasons for not being able to serve. Do you make a decision at that time?

A If it falls under the memo that we have from Judge Aulls.

Q In other words, these people would not be placed

under oath in any way before they give you this information.

A No.

Q Okay. One other question regarding the reset. Would you please explain again all the reasons that you -- you know, that a reset would be appropriate?

A That they are going to be out of town. You have a lot of that with people that come down from the north that are going to be away for a while, and if they tell you on the phone, it's physically impossible for them to get here right today, we do allow them to reset them for another day.

Q Any other reasons other than that?

A Not that I know of. You might have to ask the other Clerk.

MR. SPRINGSTEAD: May I have a moment, Your Honor?

THE COURT: Certainly.

BY MR. SPRINGSTEAD:

Q Mrs. Manus, was any effort made to contact the trial judge regarding excusing the doctor and physician? I believe there were two doctors and one dentist. No, there was one doctor and one dentist.

A One dentist. There was a doctor at Lake County Jail.

Q So there were two doctors and one dentist; right?

MR. McCABE: One was a doctor.

THE COURT: There was a dentist and a doctor.

MR. McCABE: Jail doctor.

THE WITNESS: The guy from the jail which I believe was a doctor. The dentist was Number 19.

THE COURT: Was the doctor a resident or just passing through the county jail? That was 200, Forrest Smith. Just says, "Physician at Lake County Jail."

BY MR. SPRINGSTEAD:

Q Was the Judge contacted regarding those two individuals?

A I wouldn't know. I didn't do these two.

Q Do you know exactly the number of individuals who were excused before this morning's proceedings, not counting, of course, the no shows, non-service parties. Just the individuals that were excused by the Clerk's office?

A I'd have to count them up.

THE COURT: Count them up.

MR. SPRINGSTEAD: I would ask that while she's counting, she omit the deceased people who were excused.

THE WITNESS: You don't want me to count the no service?

MR. SPRINGSTEAD: Don't count those and don't count the dead people.

THE WITNESS: How about the resets? Do you want me to count those?

MR. SPRINGSTEAD: Yes.

THE WITNESS: Sixty-eight.

BY MR. SPRINGSTEAD:

Q There were sixty-eight excusals prior to this morning's proceedings. And were two hundred fifty summonses sent out?

A Yes.

Q How many potential jurors checked in this morning?

A A hundred twenty-one.

MR. SPRINGSTEAD: No further questions of this witness, Your Honor.

CROSS-EXAMINATION

BY MR. McCABE:

Q Do you follow the Judge's orders as best you can?

A Yes.

MR. McCABE: Thank you. That's all.

THE COURT: Any other rebuttal or anything of that sort?

MR. SPRINGSTEAD: Your Honor, we'd call Pam Woodworth. I believe she's in the law library.

MR. McCABE: Maybe I can stipulate. What is it you want?

MR. SPRINGSTEAD: We'd like to know whether she contacted any of the judges regarding any of the excusals, what the reason or reasons were for the excuse, and checking on potential jurors.

MR. McCABE: These are set procedures set in more populous counties. You can call in and say I can't be there and they will be reset. The only stipulation -- they only reset any of them if the folks can't be there that day or don't want to be there, and I'll stipulate they don't contact the Court about the dentist or the doctor.

MR. SPRINGSTEAD: If the State will stipulate, we won't call her.

THE COURT: Any other witnesses?

MR. SPRINGSTEAD: No, Your Honor, we don't have any witnesses. Prepared to argue.

THE COURT: Go ahead with the argument.

MR. SPRINGSTEAD: The argument is simply set forth in the Motion, the last paragraph, 18, which specifically states that the exercise of the excusal power by the Clerks is illegal in violation of the statutory provisions and the division of power set up by the Constitution and by the statutes, Your Honor. The Clerk obviously does not have the legal authority to excuse any of these individuals under these circumstances, that authority is based solely with the trial judge. And we would submit that any delegation of that authority to the Clerk's office which would allow them to in fact excuse these individuals before they are

required to come in and participate in the proceedings like we have had this morning which the Defendant is entitled to as a matter of law to participate in, is improper, and we think the Motion to Quash the Venire should be granted.

THE COURT: Could you be more specific with your allegations as to the procedure?

MR. SPRINGSTEAD: I can cite the paragraph in the Order, Your Honor. I'd like to simply state that Florida Statutes Section 40.143, the reasons that may disqualify a juror for service, one, sub five, prospective jurors must satisfy this specific requirement, practicing attorney, practicing physician or person physically infirm may be excused from jury service and may be excused by the presiding judge. The remainder of Section 40.143 goes to who has the authority to excuse them. Under 4.02 of Florida Statutes, 1979, the duties of the Clerk of the Court relative to prospective jurors does not expressly grant the Clerk of the Court the authority to grant excusals of any prospective jurors under any circumstances. The Administrative Order entered in this particular jurisdiction by the Chief Judge confers authority on the Clerk in situations -- in all situations except hardship -- from the Judge to the Clerk, and we submit

that's an illegal designation of the duties reserved to the trial judge, and those are duties and responsibilities that should be exercised once the jury has been called in and they are, therefore, released from jury service in the presence of the Defendant for the lawful reasons made by the statute.

MR. McCABE: Briefly respond, Your Honor. The section dealing with the reasons for getting out of jury service, you are seventy, have kids under fifteen and so forth, that section merely states those people may be exempt from jury service. It doesn't say who exempts them or anything like that. Again, in some circumstances, this is done strictly by mail. A form is sent back. If you check the block over seventy, they don't even bother to summon you for jury service. There is nothing in there that says the Court has to do that. There is no prohibition against the Court delegating whatever authority. This is down to a ministerial task which is the Clerk's office. The Clerk is supposed to perform this. Hardship excuses are discretionary excusals dealt with by the Court. The terms of the statute have been met.

MR. SPRINGSTEAD: Brief response. I submit that doctors and not dentists are exempt from the provision that Mr. McCabe noted. A dentist has been excused by

the Clerk's office in this cause. I'd also like to point out -- reiterate -- none of these other people who are excused by the Clerk's office ever had to say anything under oath as the individuals who came in here today. They were placed under oath, and then asked these questions, and the information elicited from them. Therefore, the statements made to the Clerk were not even verifiable or the people cannot be held responsible for the truth of the statements they made.

THE COURT: Motion to Quash the Venire is denied. Any other motions before we recess for lunch and start with the voir dire?

MR. SPRINGSTEAD: That would be fine, Your Honor.

THE COURT: Court will be in recess until 1:30.

(Court recessed at 12:00 o'clock and reconvened at 1:30.)

(The following proceedings were held outside the presence of the prospective jurors commencing at 1:30 p.m. Bernard McCabe, Esquire, is present for the State; John Springstead, Esquire, and T. Michael Johnson, Esquire, are present for the Defendant. The Defendant is present.)

THE COURT: Do we have anything we need to do before we call the first twelve members of the jury?

MR. McCABE: No, Your Honor.

CHAPTER 40

JURORS AND PAYMENT OF JURORS AND WITNESSES

40.01 Qualifications of jurors.—Jurors shall be taken from the male and female persons at least 18 years of age who are citizens of this state and who are registered electors of their respective counties.

History.—s. 2, ch. 4015, 1891; ss. 1, 2, ch. 4122, 1893; GS 1570, 1571; s. 1, ch. 6531, 1913; RGS 2771, 2772; ss. 1, 2, ch. 12060, 1927; CGL 4443, 4444; s. 1, ch. 25125, 1949; ss. 1, chs. 26814, 26861, 26868, 1951; ss. 1, 2, ch. 67-134; s. 1, ch. 75-78; s. 1, ch. 79-233.

40.013 Persons disqualified or excused from jury service.—

(1) No person who is under prosecution for any crime, or who has been convicted in this state, any federal court, or any other state, territory, or country of bribery, forgery, perjury, larceny, or any other offense that is a felony in this state or which if it had been committed in this state would be a felony, unless restored to civil rights, shall be qualified to serve as a juror.

(2) Neither the Governor, nor any Cabinet officer, nor any sheriff or his deputy, municipal police officer, clerk of court, or judge shall be qualified to be a juror.

(3) No person interested in any issue to be tried therein shall be a juror in any cause; but no person shall be disqualified from sitting in the trial of any suit in which the state or any county or municipal corporation is a party by reason of the fact that such person is a resident or taxpayer within the state or such county or municipal corporation.

(4) Expectant mothers and mothers who are not employed full time with children under 15 years of age, upon request, shall be excused from jury service.

(5) A presiding judge may, in his discretion, excuse a practicing attorney, a practicing physician, or a person who is physically infirm from jury service.

(6) A person may be excused from jury service upon a showing of hardship, extreme inconvenience, or public necessity.

(7) A person who has served as a juror in any court in his county of residence within 2 years of the first day of January in the calendar year for which he is being considered may, upon request and submission of a sworn affidavit that such service has been rendered, be excused from jury service.

(8) A person 70 years of age or older shall be excused from jury service upon request.

History.—s. 2, ch. 3010, 1877; s. 1, ch. 4015, 1891; RS 1149; GS 1572; RGS 2774; CGL 4451; s. 2, ch. 28048, 1953; s. 7, ch. 72-334; s. 1, ch. 77-102; s. 1, ch. 77-431; s. 4, ch. 79-235; s. 1, ch. 80-170.

Note.—Former s. 40.07.

40.015 Jury districts; counties exceeding 50,000.—

(1) In any county having a population exceeding 50,000 according to the last preceding decennial census and one or more locations in addition to the county seat at which the county or circuit court sits and holds jury trials, the chief judge, with the approval of a majority of the circuit court judges of the circuit, is authorized to create a jury district for each courthouse location, from which jury lists shall be selected in the manner presently provided by law.

(2) In determining the boundaries of a jury district to serve the court located within the district, the board shall seek to avoid any exclusion of any cognizable group. Each jury district shall include at least 6,000 registered voters.

History.—s. 1, ch. 76-114; s. 2, ch. 79-233.

40.02 Selection of jury lists.—

(1) The chief judge of each circuit, or a circuit judge in each county within the circuit who is designated by the chief judge, shall request the selection of a jury list in each county within the circuit during the first week of January of each year, or as soon thereafter as practicable. The chief judge or his designee shall direct the clerk of the court to select at random a sufficient number of names, with their addresses, from the list of persons who are qualified to serve as jurors under the provisions of s. 40.01 and to generate a list of not fewer than 250 persons to serve as jurors, which list shall be signed and verified by the clerk of the court as having been selected as aforesaid. A circuit judge in a county to which he has been assigned may request additional jury lists as necessary to prevent the jury list from becoming exhausted. When the annual jury list is prepared pursuant to the request of a chief judge or his designee, the lists prepared the previous year shall be withdrawn from further use. If, notwithstanding this provision, some names are not withdrawn, such error or irregularity shall not invalidate any subsequent proceeding or jury. The fact that any person so selected had been on a former jury list or had served as a juror in any court at any time shall not be grounds for challenge of such person as a juror. If any person so selected shall be ascertained to be disqualified or incompetent

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SUPREME COURT OF THE UNITED STATES

ROBERT DALE HENDERSON *v.* FLORIDA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 84-6681. Decided July 1, 1985

The petition for a writ of certiorari is denied.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

Petitioner, after contacting police and admitting involvement in a series of murders, unambiguously asserted his right to counsel and his desire to have no discussions with the police concerning his case outside the presence of counsel. The legal import of this assertion, made while in police custody, is clear; our cases establish a "'bright-line rule' that *all* questioning must cease after an accused requests counsel." *Smith* v. *Illinois*, —— U. S. ——, —— (1984); see also *Edwards* v. *Arizona*, 451 U. S. 436 (1981); *Miranda* v. *Arizona*, 384 U. S. 471, 474 (1966). The reason for this rule is also clear from our cases, for "[i]n the absence of such a bright-line prohibition, the authorities through 'badger[ing]' or 'overreaching'—explicit or subtle, deliberate or unintentional—might otherwise wear down the accused and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance." *Smith* v. *Illinois*, *supra*, at ——. This "bright-line rule" is thus an essential "protective devic[e] . . . employed to dispel the compulsion inherent in custodial surroundings" and to thereby assure that any statements by an accused are the product of free-will rather than subtle coersion. *Id.*, at 458.

I

In this case, petitioner contends that police violated this "bright-line rule" and through custodial interrogation did

persuade him to incriminate himself further notwithstanding his earlier request for counsel's assistance during questioning; yet the Florida Supreme Court sustained the admission of the subsequently obtained evidence simply on the fact that petitioner was eventually persuaded and signed a waiver form. Such a rationale cannot be made to conform to this Court's precedents, which establish that *as a precondition to a finding of waiver* a court must find that the accused, rather than the police, reopened dialogue about the subject matter of the investigation. See *Edwards* v. *Arizona*, *supra*, 451 U. S., at 485; *Oregon* v. *Bradshaw*, 462 U. S. 1039, 1044 (1983) (plurality opinion); *id.*, at 1054 (MARSHALL, J., dissenting).

This Court has not always found it easy to define exactly when and by whom dialogue was reopened, *id.*, and perhaps the instant case can be explained as resulting from these difficulties. Here, however, the state argues that petitioner "initiated" further dialogue by minimally responding to an unrequested police explanation of the accused's fate and by "conveying" a willingness to talk through non-verbal expressions and unrelated "subtle comments." The valuable right to be free from police interrogations in the absence of counsel cannot be made to be so fragile as to crumble under the weight of elicited and subjective inconsequentials. I would grant the petition to make clear that waiver of this right is not so lightly to be assumed.

II

A few days after his assertion of the right to counsel and his consultation with an attorney, petitioner was transported from one jail to another in connection with an unrelated criminal investigation. The drive lasted almost five hours and the police officers accompanying petitioner were informed that he had asserted his right to counsel and had been advised by his counsel not to talk with the police. The police officers had nevertheless equiped themselves for the trip by

taking along specially prepared forms by which petitioner could waive his right to be free from police interrogation in spite of his previous assertion of that right. In particular, the form declared that the signatory desired to make a statement to the police, that he did not want a lawyer, and that he was aware of his "Constitutional Rights to disregard the instruction of [his] attorney and to speak with the Officers" transporting him. Resp. to Pet. for Cert. A–14.

During the course of the five hour drive, the police engaged in extended "casual conversation" with the petitioner. Although the police officers asserted that none of this conversation concerned any aspect of the case, they also asserted that petitioner's general manner as well as various "subtle comments" conveyed to them that "his conscience was bothering him," *id.*, at A–21, and that "he wanted to discuss the [criminal] matter." *Id.*, at A–20. Near the end of the five hour drive, the police stopped the car and one of the officers got out to make a phone call. The officer who remained with the accused perceived that petitioner "acted like he was interested in what we were doing," *id.*, at A–60, so he explained that they were "calling the chief of detectives just to tell him that we were here." *Ibid.* When the accused "wanted to know what we would do then," the officer explained that they would probably place petitioner in jail. According to the officer, the petitioner then responded with a "look on his face" that made clear his willingness to talk with the police. As the officer put it, "It's hard to describe an expression," but he could see that the petitioner was thinking: "You've got to be kidding. . . . Here I am. I know all these things, and all you're going to do is take me to jail." *Id.*, at A–61. The officer then directly asked the petitioner if there was anything he would like to tell the police. When petitioner expressed a tentative willingness to give information about the location of his victim's bodies, the police confronted him with the previously prepared waiver forms, which he signed.

III

It is clear that the direct question by the police officer easily meets this Court's definition of interrogation. See *Rhode Island* v. *Innis*, 446 U. S. 291, 300–301 (1980). And the fact of the arrest, even without the five hour drive, makes the context clearly custodial. Thus the issue is whether the petitioner "initiated" a dialogue with the police concerning the subject matter of the investigation. By the police officer's own testimony, the only actual speech by the petitioner that directly related to his case was the casual question of what would happen after the officer telephoned the "chief of detectives." Although four members of this Court found a similar statement to be "initiation" of dialogue in *Bradshaw*, *supra*, there the comment was at least unrelated to any prior police initiated conversation. Here, in contrast, the comment was a response to the police officer's unsolicited partial explanation of the police's intentions. If the petitioner's question is deemed a general inquiry regarding the investigation, than the police officer's comment that elicited it must have been a similar reinitiation of dialogue. It is thus not surprising that the police insist that the petitioner made clear his desire to talk through repeated, though "subtle" hints. But surely, the right to counsel cannot turn on a police officer's subjective evaluations of what must stand behind an accused's facial expressions, nervous behavior, and unrelated subtle comments made in casual conversation. If it were otherwise, the right would clearly be meaningless.

I dissent from the Court's denial of certiorari.